

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO;
AMERICAN FEDERATION OF STATE
COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO, et al.,

Plaintiffs,

v.

UNITED STATES OFFICES OF
PERSONNEL MANAGEMENT, et al.,
Defendants.

Case No.

3:25-cv-01780-WHA

Page 2

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VIDEOTAPED DEPOSITION OF
NOAH PETERS

DATE: Wednesday, March 26, 2025
TIME: 1:16 p.m.
LOCATION: Bredhoff & Kaiser PLLC
805 15th Street Northwest, Suite 1000
Washington, DC 20005
REPORTED BY: Samuel Pachon
JOB NO.: 7269168

A P P E A R A N C E S

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20 ALSO PRESENT:

21 Norman Eisen, Co-Counsel

22 Gene Aronov, Videographer

I N D E X

EXAMINATION:	PAGE
By Ms. Leonard	10

E X H I B I T S

NO.	DESCRIPTION	PAGE
Exhibit 1	Guidance on Probationary Periods	39
Exhibit 2	Temporary Transition Schedule C	43
Exhibit 3	CHCO Website Printout	54
Exhibit 4	2/13/25 Defendant's Disclosure	66
Exhibit 5	Deferred Resignation Memorandum	75
Exhibit 6	2/12/25 Email, Probationary Employee Actions	82
Exhibit 7	2/12/25 Email, Activity in Case	104
Exhibit 8	Fork in the Road Program Closed	105
Exhibit 9	Memorandum Template	109
Exhibit 10	2/14/25 Email, CHCO Council Special Session	113
Exhibit 11	Forest Service Briefing Paper	120
Exhibit 12	2/28/25 Email, Statement from OPM	141
Exhibit 13	March 4th Revision	143
Exhibit 14	Presidential Action 3/20/25	153

Page 7

1 E X H I B I T S (Cont'd)

2 NO.	DESCRIPTION	PAGE
3 Exhibit 15	Declaration of Charles Ezell	157
4 Exhibit 16	Declaration of Noah Peters	160

5

6 QUESTIONS INSTRUCTED NOT TO ANSWER

7 PAGE	LINE
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8 24	3
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9 38	17
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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: Good afternoon. We
3 are going on the record at 1:16 p.m. on May [sic] 26,
4 2025. Please note that the microphones are sensitive
5 and may pick up whispering in private conversations.
6 Please mute your phones at this time.

7 Audio and video recording will continue
8 to take place unless all parties agree to go off the
9 record.

10 This is media unit 1 of the
11 videorecorded deposition of Noah Peters, taken by
12 Counsel for Plaintiff in the matter of American
13 Federation of Government Employees, et al. vs. United
14 States Office of Personnel Management, et al. filed in
15 the United States District Court for the Northern
16 District of California, San Francisco Division, case
17 number 3:25-cv-01780-WHA.

18 The location of this deposition is
19 Bredhoff & Kaiser at 805 15th Street Northwest, Suite
20 1000, Washington, DC. My name is Gene Aronov
21 representing Veritext, and I'm the videographer. The
22 court reporter is Samuel Pachon from the firm

1 Veritext.

2 I'm not authorized to administer an
3 oath, I am not related to any party in this action,
4 nor am I financially interested in the outcome.

5 If there are any objections to the
6 proceeding, please state them at the time of your
7 appearance.

8 Counsel, and all present, including
9 remotely, will now state the appearances and
10 affiliations for the record beginning with the
11 noticing attorney.

12 MS. LEONARD: Good afternoon. Danielle
13 Leonard. With me, as counsel for plaintiffs, Robin
14 Tholin, Matt Blumin, Rushab Sanghvi, and Pooja
15 Chaudhuri.

16 MR. FUCHS: Yuri Fuchs from the
17 Department of Justice on behalf of Defendants. With
18 me is Chris Hall and Bob Bigler.

19 THE VIDEOGRAPHER: Will the court
20 reporter please swear in the witness, and then Counsel
21 may proceed.

22 THE REPORTER: Okay.

1 Please raise your right hand.

2 WHEREUPON,

3 NOAH PETERS,

4 called as a witness and having been first duly sworn
5 to tell the truth, the whole truth, and nothing but
6 the truth, was examined and testified as follows:

7 THE REPORTER: You may proceed.

8 EXAMINATION

9 BY MS. LEONARD:

10 Q Okay. Ready to proceed, Mr. Peters?

11 A Yeah.

12 Q Good afternoon, Mr. Peters. Again, Danielle
13 Leonard, counsel for the plaintiffs. Mr. Peters, did
14 you review any documents that refresh your
15 recollection in preparation for this deposition here
16 today?

17 A No.

18 Q Did you review any documents on your own
19 without counsel in preparation for this deposition
20 today?

21 A No.

22 Q You are currently employed as the senior

1 advisor to the director of the United States Office of
2 Personnel Management; correct?

3 A Yes.

4 Q And you began your federal employment in
5 that position on January 20, 2025. Is that right?

6 A Yes.

7 Q You started working at OPM on Inauguration
8 Day?

9 A Yes.

10 Q Did you watch the inauguration or did you
11 get right to work?

12 MR. FUCHS: Objection. Vague.

13 THE WITNESS: We watched the
14 inauguration.

15 BY MS. LEONARD:

16 Q And how long did you spend watching the
17 inauguration that day?

18 A Maybe an hour.

19 Q And Inauguration Day on January 20th -- that
20 was also a federal holiday, Martin Luther King Day;
21 right?

22 A Yes.

1 Q And so that was a holiday for the regular
2 career OPM staff?

3 A No. They -- the regular career OPM staff
4 were all there to assist with the transition.

5 Q They were all there?

6 A To my knowledge, the ones -- the career
7 staff -- at least the leadership was all there.

8 Q And can you describe what you did for OPM
9 that day -- just in general terms, meaning you
10 personally?

11 A What I did that day in general terms? I --
12 I went to -- we walked over to the OPM building. We
13 watched the -- we watched the inauguration.

14 There was -- we also signed our paperwork to
15 become, you know, federal employees in our positions.
16 So we signed our appointment papers, we signed all
17 of -- we filled out all of our initial employee forms,
18 and there are quite a -- there were quite a few of
19 them, as I recall.

20 And the HR -- one of the HR people -- I know
21 her name, I -- I just don't remember it right now.
22 She was there, and gave us all of our papers. And

Page 13

1 then there were about -- I remember we all had name
2 tags -- so we went to the conference room. We all had
3 name tags.

4 We had a briefing, or we met with the
5 career -- several members of the career staff. We got
6 set up. And so then I think we -- we were waiting --
7 waiting for -- you know, so then Chuck was introduced
8 as the agency head.

9 And then we all -- and then I think that we
10 were -- wait -- I remember that -- that might have
11 happened around 3 or 4 p.m when his -- when his
12 paperwork came.

13 And then I remember Allison Kidd-Miller, our
14 Deputy GC was there. Some members of the executive
15 secretariat were there. And then we kind of did a
16 bunch of -- of work stuff after that. And some -- and
17 I -- so I think that's -- I think that's about it.
18 That's about it.

19 Q What time did you finish working that night?

20 A I have -- don't remember.

21 Q Okay. The new OPM acting Director, Charles
22 Ezell, started on January 20th. Is that who you refer

1 to as Chuck?

2 A Yes. His name is, you know, Charles Ezell,
3 but he goes by Chuck.

4 Q Are you having difficulty with your phone?

5 A No.

6 Q Mr. Peters? Okay. Because if you need to
7 go off the record, we can.

8 A No -- no.

9 Q Okay. Amanda Scales started as the new OPM
10 chief of staff, as well?

11 MR. FUCHS: Objection. Vague.

12 THE WITNESS: Yes. She did.

13 BY MS. LEONARD:

14 Q And had you met Chuck Ezell prior to January
15 20th?

16 A No.

17 Q Had you met Amanda Scales prior to January
18 20th?

19 A Yes.

20 Q In what context had you met Amanda Scales?

21 A We went -- sat -- and were introduced on
22 Friday -- the Friday before Inauguration Day, and we

1 had a meeting.

2 And we met with her and Brian Bjelde,
3 B-J-E-L-D-E. And I think we -- we talked briefly
4 about what we might do -- what might happen on the
5 Monday, January 20th, when we all kind of -- when we
6 were kind of starting.

7 Q Who else was at this meeting on the Friday
8 before?

9 A It was just Brian and Amanda.

10 Q And so when you said we, were you referring
11 to yourself or any other people who were at this
12 meeting?

13 A No. I was just referring to -- to myself.

14 Q So when you and Amanda Scales and Brian met
15 on the Friday before you started at OPM, you were not
16 yet a federal employee; correct?

17 A No. I was not yet a federal employee.

18 Q And to your knowledge, Amanda Scales was not
19 yet a federal employee at that meeting, as well;
20 correct?

21 A You -- answering for what I knew at -- at
22 the time? I didn't know one way or the other, whether

1 she was a federal employee or not.

2 I don't think it would've -- I don't think
3 it would've changed how I interacted with her had
4 I -- had I known that, but I -- I don't recall having
5 a specific recollection of whether she was a -- a
6 federal employee or -- or not.

7 Q In January 2025, prior to coming on board at
8 OPM, you were employed by a law firm called Brewer,
9 Attorneys & Counselors. Is that right?

10 A I was employed by Brewer Attorneys from
11 approximately September 20th or 22nd of -- it might
12 have been early -- it might have been the 15th -- of
13 2022, so before the end of September of 2022.

14 And then I was employed by Brewer from that
15 time until -- until I think I was employed through
16 Inauguration Day of January 20, 2025.

17 Q When did your employment with Brewer end,
18 exactly? Which day?

19 A My last day of employment with Brewer was
20 January 20th of 2025.

21 Q Are you saying you overlapped by one day or
22 that it ended?

1 A That was the date that I provided as the --
2 as the end date for my employment there.

3 Q And during the time that you were employed
4 by Brewer, you had some role at the Heritage
5 Foundation's Project 2025?

6 A No.

7 Q Are you aware that you were listed on the
8 Project 2025 website among personnel for that project?

9 A I do not recall being -- no. I was -- to my
10 knowledge, I was not listed. I was listed on some --
11 on a website that was set up by an NGO called Project
12 2025, like, Data or something.

13 That was a list that was compiled by an NGO,
14 like, based on news reports about who was affiliated
15 with -- I think it was Project 2025 Info.

16 And it was compiled by, like, Democracy
17 Foundation or some -- something, like, Democracy
18 Defenders, or some title like that. But it -- it
19 was -- so, it was not compiled by the people who
20 were -- it wasn't compiled by, like, Heritage.

21 It was just a -- like, a page that they
22 created during the election. I think it was, like,

Page 18

1 August or September of 2024, and it listed --

2 Q So Mr. Peters, I'm going to interrupt you
3 there, and I don't usually do this, but we're
4 under -- we're on a clock, and I'm going to ask
5 specific questions.

6 And I'm going to ask that you give me
7 specific answers to the questions that I ask and not
8 go on these tangents to run out the clock. Is that
9 okay?

10 A I was -- I was not running out the clock. I
11 was just -- I was trying to think through the
12 answer -- the best answer to that question.

13 Q Understood and appreciated. So the question
14 was, were you aware that you were listed on the
15 Project 2025 website from the Heritage Foundation as
16 among the personnel for that project? And I believe
17 your answer was no, you were not aware of that. Is
18 that correct?

19 MR. FUCHS: Objection. Asked and
20 answered.

21 THE WITNESS: Yeah. I mean, not only
22 was I not -- not aware, I don't believe that I was

Page 19

1 ever on -- I was never on the Heritage website as a
2 member or contributor or anything for Project 2025.

3 BY MS. LEONARD:

4 Q Were you involved in any way in the Heritage
5 Foundation's Project 2025, Mr. Peters?

6 A No.

7 Q This is not your first time as a federal
8 employee; correct?

9 A Yes.

10 Q So you were the Solicitor General of the
11 FLRA from approximately September 2019, to September
12 2022?

13 A No. I wish it had the title "Solicitor
14 General", but it was -- the title was just
15 "Solicitor".

16 Q Oh, I'm sorry. Thank you for that
17 clarification. So is it fair to say, as a solicitor
18 of the FLRA, you needed to be familiar with laws
19 pertaining to federal employment, including the CSRA
20 and the FSLMRS?

21 MR. FUCHS: Objection. Leading
22 Objection. Vague. Objection. Compound.

Page 20

1 THE WITNESS: Well, I would like
2 to -- that's a great -- that's a great setup for a
3 cross question, by the way. Well done.

4 But it -- it is compound. And I also
5 was -- I -- I would have to look at my position
6 description to know exactly what it said.

7 So I -- I don't want to answer
8 inaccurately, but my -- but I -- I believe that I was,
9 during that time -- I mean, I did build up a
10 familiarity with -- with the statute and with the
11 CSRA.

12 BY MS. LEONARD:

13 Q And is it also fair to say that you have
14 some familiarity with appeal rights for federal
15 employees under those statutes?

16 MR. FUCHS: Objection. Leading.
17 Objection. Vague.

18 THE WITNESS: It -- I think some --
19 some familiarity is accurate.

20 BY MS. LEONARD:

21 Q You accepted the offer to become senior
22 advisor at OPM, presumably at some point prior to your

1 first day?

2 MR. FUCHS: Objection. Lack of
3 foundation. Objection to the form of the question.

4 THE WITNESS: I think that -- oh,
5 sorry -- sorry. Sorry.

6 MR. FUCHS: Yeah. Go ahead.

7 THE WITNESS: Okay. I -- I got to stop
8 doing that. Did I -- I accepted the offer to be
9 senior advisor before January 20th.

10 I was fingerprinted -- and I was
11 fingerprinted in advance of January 20th. And so I
12 probably would have accepted the position about
13 Thursday of the week before.

14 BY MS. LEONARD:

15 Q So roughly Thursday -- January -- I'm going
16 to say 16th -- something like that?

17 A A rough -- yeah. Very roughly it
18 would've -- it would've been the 16th.

19 Q And who made you the job offer?

20 A So the job offer was sent via email. My
21 recollection is that it was sent by -- by Carmen
22 Garcia, who's our chief human capital officer at OPM.

1 Q And were you given a job description, either
2 orally, or in writing, for your role as senior advisor
3 to the OPM director?

4 A I -- I would have to look at my offer letter
5 to see what -- what was on there. I remember that it
6 being very, very, very general about -- about the job
7 and the -- the job description.

8 Q Other than the Friday conversation that you
9 have described with Amanda Scales and Bill, did you
10 have any other conversations with anyone about your
11 upcoming role at OPM?

12 MR. FUCHS: Objection. Vague.

13 THE WITNESS: Did I have any
14 conversations with anyone about my upcoming role at
15 OPM? That's a -- that's a -- a really, really good
16 question.

17 I don't recall any specific
18 conversations about my -- like, my role. I was, you
19 know, sent the -- the offer letter on Thursday.

20 You know, I remember that I was -- I
21 was happy to be at -- at OPM. I think it was very
22 aligned with my, like, prior experience, but I don't

Page 23

1 recall any specific conversations about what my role
2 would be.

3 BY MS. LEONARD:

4 Q Did you help prepare any documents prior to
5 January 20 of '25 related to your role at OPM?

6 MR. FUCHS: Objection. Vague.
7 Objection. Lack of foundation.

8 THE WITNESS: Related to my role at
9 OPM? No.

10 BY MS. LEONARD:

11 Q Related to OPM in general, did you work on
12 any documents in advance of January 20, 2025 --
13 sorry -- January 20, 2025?

14 MR. FUCHS: Same objections.

15 THE WITNESS: Yeah. We prepared -- I
16 worked on the drafts of two -- two different memos. I
17 think they were the ones that were the ones that were
18 issued on day one.

19 BY MS. LEONARD:

20 Q Who else worked with you on the drafts of
21 the memos that were issued on day one, meaning January
22 20th?

1 MR. FUCHS: Objection to the extent
2 that this calls for any kind of intra-agency
3 discussion around a draft memorandum. I'd instruct
4 the witness not to answer based on the deliberative
5 process privilege.

6 MS. LEONARD: Mr. Peters was not an
7 employee at the time. That's not a proper basis for
8 an instruction.

9 BY MS. LEONARD:

10 Q You can answer the question.

11 A I was -- I drafted the -- I remember I
12 worked on those two by myself.

13 Q You spontaneously started drafting memos for
14 your upcoming role at OPM by yourself, Mr. Peters? Is
15 that your testimony here today?

16 A Yes. I drafted the -- I began drafting the
17 memos entirely on -- on my own, and I didn't discuss
18 them with -- until we got to -- until I got on the
19 job. I didn't -- didn't discuss them with -- with
20 anyone.

21 Q You just testified a moment ago about a
22 meeting that you had on the Friday before you started

1 working at OPM with Amanda Scales and Bill. Is it
2 your testimony that you did not discuss those memos at
3 that meeting, Mr. Peters?

4 A So the two people were -- were Amanda Scales
5 and Brian Bjelde, and we didn't discuss those memos.
6 I think we might've discussed, like, different things
7 that would happen during the day, but we didn't
8 discuss those memos in terms of the content or
9 anything like that.

10 I mean, as far as like -- so one of the two
11 was on -- you know, was on, like, temporary
12 authorities for Schedule C employees, and the other
13 was the one that I assume that you're going to ask
14 about at some point, which was the one on
15 administrative leave and probationary periods.

16 And I didn't -- I don't even know that they
17 had looked at those documents.

18 Q So your testimony is, you didn't talk to
19 anyone else -- anyone -- about either of those memos
20 before you started working on January 20th?

21 MR. FUCHS: Objection. Vague.

22 THE WITNESS: I wrote the -- those two

Page 26

1 memos by myself. Yeah. I -- I don't -- don't recall
2 any conversations with people about them.

3 BY MS. LEONARD:

4 Q Mr. Peters, the memos were entirely your
5 idea without talking to anyone else? Is that your
6 testimony?

7 MR. FUCHS: Objection. Leading
8 Objection. Asked and answered.

9 THE WITNESS: The memos that I -- that
10 were drafted -- the day one memos were written
11 entirely by me without -- without any input from
12 anyone else.

13 BY MS. LEONARD:

14 Q Let's ask a slightly different question.
15 The idea for the memos, Mr. Peters -- did you discuss
16 the idea for the memos with anyone else before January
17 20th?

18 MR. FUCHS: Objection. Lack of
19 foundation.

20 THE WITNESS: I might have discussed
21 the -- I -- we might have had discussions about ideas
22 around administrative leave.

Page 27

1 There was a fellow named -- there was a
2 fellow named Keenan Kmiec who was involved in -- who
3 I -- I had discussions about the idea of, like, rules
4 around administrative leave with. So that memo, I
5 think, I might have discussed with Keenan.

6 BY MS. LEONARD:

7 Q What about the part pertaining to
8 probationary employees in that memo, which was issued
9 on January 20th? Did you discuss probationary
10 employees with anyone else before January 20th,
11 Mr. Peters?

12 A So to clarify the -- the last answer with --
13 with Keenan -- I think I just talked about the idea
14 of -- of administrative leave.

15 The probationary periods -- that piece of
16 the memo was entirely something that I thought of on
17 my own, and I did not discuss that with a soul before
18 January 20th.

19 Q We will come back to that.

20 A And -- and may -- may I just add to that,
21 the idea -- the -- what was the thought process behind
22 that was -- as stated in the memo, was that agencies

1 would make lists -- would simply gather information on
2 who qualified for the category of people who did not
3 have MSPB -- you know, for whom there wouldn't be
4 necessarily be a -- you know, a drawn out MSPB process
5 for terminating them.

6 So these would be people on an initial
7 probationary period. These wouldn't be employees who
8 had served a probationary period in another role and
9 then were promoted.

10 This would be people who were simply
11 employees on an initial probationary period in the
12 federal service.

13 And the memo just said, identify and
14 make -- identify who you wish to keep and who you --
15 you wish to retain. It was -- I don't even -- yeah.

16 I mean, it was not fire every probationary
17 employee, and it was not a direction to agencies to
18 fire any probationary employee.

19 And I -- it wasn't -- and it wasn't taken --
20 I don't think anybody at the time interpreted it as
21 fire every single probationary employee.

22 Q Well, let's go back to your idea, which you

Page 29

1 testified here today was yours alone, to tell agencies
2 to collect the names of every probationary employee
3 and submit them to OPM. That was your idea? Is that
4 right?

5 A Well, I don't know that it was -- so how --
6 I don't even think that the -- and I -- I'm not 100
7 percent clear on what -- I -- I've never reviewed what
8 the agency submitted, but I don't think that the
9 agencies even submitted names.

10 I think that that was just an internal
11 process that they were going to run through, which is
12 just you yourself identify who -- who these people
13 are. So with that clarification, I don't know if
14 that -- if that gets us anywhere on this.

15 Q The reason that you had the idea that
16 agencies should start identifying all of their
17 probationary employees and report that to OPM was
18 because these employees, in your view, were easy to
19 terminate; correct?

20 MR. FUCHS: Objection. Compound.
21 Objection. Leading. Objection. Lack of foundation.

22 THE WITNESS: The -- no. That's not

1 why -- that's not why. I -- I was mentioning that in
2 terms of defining what -- who was the people that were
3 expected to be on -- that we were looking for them to
4 identify.

5 The reason was not because they didn't
6 have appeal -- what -- was not because they didn't
7 have initial appeal rights though, or because they
8 didn't have appeal rights.

9 The reason was because we cited the
10 MSPB report from 2005, which said that probationary
11 periods are not being effectively used in the federal
12 service to actually, like, say -- do you add -- like,
13 is your performance such that you are going to be a
14 long-term asset to the federal government?

15 Like get -- actually using the
16 probationary period to assess employee performance.
17 And the data shows that the agencies were not doing
18 that.

19 The agencies were just using -- were
20 kind of treating the probationary period as a -- with
21 the expectation that, you know, people are just going
22 to stay, and that there isn't going to be any serious

1 consideration of their performance, or any serious
2 consideration of the agency's needs going forward.

3 So no, the reason was not simply to
4 pick people who might be vulnerable to, like, some
5 sort of process.

6 The reason was for agencies to conduct
7 a focused review of who was serving these periods,
8 which is the reason why the probationary periods were
9 created -- or they're called trial periods -- for
10 employees in the accepted service -- the reasons
11 they're supposed to be a -- a trial.

12 And the regulations say specifically
13 that the employee bears -- you know, the agencies are
14 supposed to use these periods to assess employee
15 performance and see whether they have demonstrated
16 their fitness for continued employment or continued
17 permanent appointment in the federal service, which
18 has very -- you know, which has important consequences
19 in terms of, you know, getting a degree of -- a -- a
20 very kind of high degree of process around
21 termination.

22 But, you know, but the -- but the --

1 the agencies have always been encouraged to use the
2 periods very -- you know, very stringently, but it
3 just wasn't happening to my knowledge at the time, so.
4 BY MS. LEONARD:

5 Q So that was the reason you thought it was a
6 good idea to write this memo telling agencies to
7 collect lists of all their probationary employees
8 because you believe the agencies were not using the
9 performance assessments correctly? Is that right?

10 MR. FUCHS: Objection. Lack of
11 foundation. Objection. Leading.

12 THE WITNESS: Yeah. I mean, it's
13 certainly a leading question.

14 MS. LEONARD: This is cross, by the
15 way.

16 THE WITNESS: No. I -- I understand.
17 It's just -- you know, and you're doing -- you're
18 doing what you're supposed to be doing, which is
19 leading, and especially given the short timeframe, it
20 may -- it absolutely makes sense for you to lead and
21 lead very aggressively. But what -- sorry. Can you
22 repeat the question?

1 BY MS. LEONARD:

2 Q Sure. I'll ask a different question
3 actually, Mr. Peters. So when you had the idea --

4 A Oh, let me -- let me go back to what I --
5 what I was going to say.

6 Q I'll ask -- Mr. Peters, I'm going to ask a
7 different question.

8 A Yeah.

9 Q So, Mr. Peters, when you had the idea for
10 this memo telling federal agencies to collect the
11 names of all of their probationary workers -- when you
12 had that idea, you were -- you believed that those
13 employees had fewer appeal rights to the MSPB than
14 other civil service employees; right?

15 MR. FUCHS: Same objections.

16 THE WITNESS: I think that the -- the
17 idea was that there would be new leadership at the
18 agencies who could give a fresh look to -- to some of
19 these issues because we've wanted to make sure that
20 agencies were -- had effective -- I mean, this
21 one -- you know, want to make sure that agencies have
22 effective performance -- you know, systems.

1 And so the reason -- so the -- you
2 know, but as I said, the -- the fact is that the --
3 you can't kind of separate the process from the
4 substance in this case.

5 The reason why the substance is
6 different is because the process ramps up radically
7 after the probationary or trial period. And so -- so
8 they're kind of interconnected.

9 So it's not just -- we're not just kind
10 of picking people in the school yard to go, you know,
11 say, "Hey, you know, get that guy."

12 The reason is because the -- the
13 process that they -- that is provided for in the
14 federal statute -- it's higher because you have a
15 gating mechanism -- because you have a trial period.
16 So it's almost like -- think about it this way -- when
17 you go to court and you get a judgment; right?

18 MS. LEONARD: Okay. I'm going to cut
19 you off with the narrative because it is
20 non-responsive. I'm going to move to strike your
21 answer as non-responsive, Mr. Peters.

22 THE WITNESS: The entire -- the entire

1 answer?

2 BY MS. LEONARD:

3 Q I'm going to ask you to answer the questions
4 that I ask. When you -- the question, Mr. Peters, is
5 when you wrote this memo, which you have testified was
6 your idea alone --

7 A Yeah.

8 Q And you own that -- that that was that memo
9 on January 20th, telling everyone to collect the names
10 of their probationary employees. That was your idea?

11 MR. FUCHS: Objection. Asked and
12 answered --

13 BY MS. LEONARD:

14 Q Without talking to anybody else. Is that
15 your testimony?

16 A I'm not -- I mean, when you say own that,
17 that's kind of colloquial -- I mean, own it in -- in
18 what context?

19 Q Is that your testimony, Mr. Peters?

20 A My -- my testimony is -- is that I -- the --
21 I -- the memo and particularly -- especially the part
22 about probationary periods, was entirely my idea. And

1 I never spoke about it with anybody later, like,
2 before or -- or later until well into my time at -- at
3 OPM.

4 Q And when you wrote that you believed that
5 the process, as you just described it, for
6 probationary employees to object to any termination,
7 was less substantial than the appeal rights for civil
8 service employees; right?

9 MR. FUCHS: Objection. Vague.

10 BY MS. LEONARD:

11 Q That's a yes or no question.

12 A Well, think about it like -- so it's called
13 a trial period; right? Think about it, like, you have
14 a trial and then you have a judgment; right?

15 And it's actually very, very difficult to
16 undo a judgment because there -- you know, when you --
17 what's gone into a judgment has been a lot of vetting,
18 a lot of work, a lot of scrutiny. So it's -- it's
19 actually -- it can be easy to -- for a judge, for
20 example, to change his mind before judgment --

21 Q I'm going to -- I do not do this. I'm going
22 to interrupt you and ask you to answer the questions.

1 If you continue to do this, we will hold
2 this deposition open, we will get more time from Judge
3 Alsup, and you will be back here longer. So please
4 answer my questions directly without these extended
5 narratives. Can you agree to do that, Mr. Peters.
6 Yes, or no?

7 A Yes --

8 MR. FUCHS: Please don't badger the
9 witness.

10 BY MS. LEONARD:

11 Q Thank you. At the memo on -- day one
12 memo -- January 20th -- that was issued to all federal
13 agencies. Do you recall that?

14 A Yes. The document said that it was issued
15 to -- it went to all -- heads of all departments and
16 agencies, and I believe it also had a CC line on it,
17 as well.

18 Q And you gave all federal agencies four days,
19 including the federal holiday, until January 24th to
20 collect the names of every probationary employee. Do
21 you recall that?

22 MR. FUCHS: Objection. Lack of

1 foundation.

2 THE WITNESS: The memo went out -- did
3 not go out from -- from me. I mean, it wasn't -- it
4 wasn't me, Noah Peters giving people a deadline.

5 It was the -- the agency it was
6 from -- the agency had -- and, you know, Chuck
7 reviewed and signed the -- the memo. So I didn't -- I
8 didn't send anything out to heads of departments or
9 agencies.

10 BY MS. LEONARD:

11 Q Are you suggesting that Chuck Ezell changed
12 the deadline you had drafted and made it January 24th?
13 Is that your suggestion, Mr. Peters?

14 MR. FUCHS: Objection to the extent
15 that that calls for testimony about internal agency
16 deliberations once he was senior advisor. I'd
17 instruct the witness not to answer on the basis of
18 deliberative process privilege.

19 MS. LEONARD: You have put the facts at
20 issue with respect to what was told to agencies.
21 Mr. Peters has submitted a declaration. You've waived
22 any privilege that pertains to this.

1 We can address that during a break.
2 I'm not going to waste time on the record on that, but
3 you've put the facts at issue and the privilege is not
4 well taken.

5 We'll call the Judge during a break to
6 get clarification on that, and I suspect I know where
7 he will land. But for now, we'll move on. I'm going
8 to mark this as Exhibit 1.

9 (Exhibit 1 was marked for
10 identification.)

11 MR. FUCHS: Yeah. I'll say for the
12 record, communications with agencies -- but
13 communications within OPM would be subject to
14 deliberative process privilege. And we haven't waived
15 that privilege.

16 MS. LEONARD: We'll discuss it during
17 the break.

18 THE WITNESS: What was the -- what was
19 the waiver?

20 MS. LEONARD: We'll discuss it during
21 break. Okay. We're marking that as Exhibit 1. You
22 can hand that to -- so that's your -- that's the copy

Page 40

1 for counsel. You can take the copy with the exhibit
2 number on it is for you. Okay. Back on the record.

3 BY MS. LEONARD:

4 Q Mr. Peters, if you could take a look at
5 what's been marked as Exhibit 1. This is the January
6 20, 2025, OPM memorandum to heads and acting heads of
7 departments and agencies called Guidance on
8 Probationary Periods, Administrative Leave and
9 Details.

10 Mr. Peters, this is the day one memo to
11 which you've been referring that you drafted prior to
12 January 20th; correct?

13 A This is the memo that was initially issued
14 on January 20th, but I do want to note that this was
15 revised on March 5th in response to the temporary
16 restraining order.

17 And it now includes a specific
18 clarification, which was always the intent, which is
19 that this was not -- never was any sort of direction
20 to terminate any employee.

21 MS. LEONARD: For the record, Norm
22 Eisen, co-counsel in the case, is now in the room too.

1 BY MS. LEONARD:

2 Q This Exhibit 1 is the January 20th
3 memorandum that was issued to agencies by OPM;
4 correct?

5 A Well, it looks like this is a copy that was
6 filed with the Court, 'cause it has a court -- it
7 looks like this is -- was filed on the docket at some
8 point.

9 Q By your counsel?

10 A Okay. Yeah. So I assume -- I assume that
11 the -- that it's the one.

12 Q Okay. So this is the memo we've been
13 talking about with respect to probationary periods.
14 You see that section right there?

15 A Yes.

16 Q And this states, "By no later than January
17 24, 2025, agencies should identify all employees on
18 probationary periods." Do you see that?

19 A Yeah. And I think one -- one thing that's
20 important to note is that -- yeah. I mean, that's --
21 that was -- what was said in the memo.

22 Q And it also says, "And send a report to OPM

1 listing all such employees." Do you see that?

2 A Yes.

3 Q So the memo required federal agencies to
4 send a list of all probationary employees to OPM by no
5 later than January 24, 2025. Do you see that?

6 A Yeah. Although I would note that I did not
7 look at those reports, and I don't know whether they
8 actually had, like -- I -- I don't know that they
9 listed the names.

10 Q If you didn't look at them, how do you know
11 that they didn't list the names, Mr. Peters?

12 A I don't think that, at least initially,
13 they -- they listed the names, but I -- you're --
14 you're right. I don't know one way or the other.

15 Q So when you drafted this memo prior to
16 January 20th, did it include this instruction to
17 agencies to compile all the names and send them to OPM
18 by January 24th? Did your draft include that
19 instruction, Mr. Peters?

20 A Yes.

21 Q This was not the only memorandum that OPM
22 issued on day one to all agencies and agency heads;

1 correct?

2 A That's right. There was another one.

3 Q There was more than one. So we're going to
4 mark the next as Exhibit 2.

5 (Exhibit 2 was marked for
6 identification.)

7 A This.

8 Q Okay. Mr. Peters, you've been marked --
9 with what's been identified as Exhibit 2. It's a
10 January 20, 2025, memorandum from OPM to heads and
11 acting heads of departments and agencies, and it is
12 entitled "Temporary Transition Schedule C and Schedule
13 C Authorities and Non-Career Senior Executive Service
14 Appointing Authorities." Do you see that?

15 A Are you going to give me time to read it?

16 Q I'm not going to ask you questions
17 about -- I'm not -- are you familiar with this
18 memorandum, Mr. Peters?

19 A Are you going to give me time to read it?

20 Q Mr. Peters, are you familiar with this
21 memorandum?

22 A I'd like a -- I'd like a minute to read it,

1 please.

2 Q Mr. Peters, did you draft this memorandum?

3 MR. FUCHS: Just let the deponent give
4 it -- have some time to read it.

5 MS. LEONARD: We're not going -- we can
6 go off the record.

7 THE VIDEOGRAPHER: Off the record at
8 2:03 p.m.

9 (Off the record.)

10 THE VIDEOGRAPHER: We're back on the
11 record. The time is 2:05 p.m.

12 BY MS. LEONARD:

13 Q Okay. Mr. Peters, you've had a moment to
14 look at Exhibit 2. This is a memorandum dated January
15 20th to heads and acting heads titled "Temporary
16 Transition Schedule C." Do you see the full title
17 there on the document?

18 A Yes.

19 Q This is a memo that you wrote prior to
20 January 20th; correct?

21 MR. FUCHS: Objection. Lack of
22 foundation.

1 THE WITNESS: Yes.

2 BY MS. LEONARD:

3 Q And you previously testified here today that
4 you wrote two memorandums prior to day one, January
5 20th. This is one of them; right?

6 A Yes. And I would note that this is almost
7 word for -- this is very, very similar to the January
8 8, 2025, memo from acting OPM Director Rob Shriver.
9 This is very, very similar to that memo.

10 I think that the big change to this was -- I
11 think it removed the cap for temporary transition
12 Schedule C.

13 And I think it might have had a different --
14 I -- I don't remember what the difference was. I
15 think the apportionment or the allocation for the
16 non-career and limited SES may have been different
17 from what had -- what was in the -- the January 8,
18 2025 Rob Shriver memo.

19 MS. LEONARD: Move to strike as
20 non-responsive.

21 BY MS. LEONARD:

22 Q Mr. Peters, this memo for temporary

Page 46

1 transition Schedule C employees would apply to Amanda
2 Scales; correct?

3 MR. FUCHS: Objection. Lack of
4 foundation.

5 THE WITNESS: I -- I have no -- no
6 clue.

7 BY MS. LEONARD:

8 Q You're aware that Amanda Scales continues to
9 be employed by Elon Musk's AI company, even though she
10 is serving as the chief of staff of OPM?

11 MR. FUCHS: Objection. Relevance.

12 THE WITNESS: Yeah. I -- I am not
13 aware of that. I have no idea.

14 BY MS. LEONARD:

15 Q And is it your testimony that you did not
16 talk about this memo with Amanda Scales in the Friday
17 meeting before you started work for OPM?

18 A I did not. We did not have any conversation
19 about this -- this memo when -- like I said, this is
20 almost exactly -- like, this is very, very similar to
21 the January 8, 2025, memo that was put in -- put out
22 by the former acting director of -- of OPM.

1 Another change was that the allocations for
2 inspector generals, I believe were -- was removed from
3 this as I read the footnote.

4 MS. LEONARD: Move to strike everything
5 after I did not talk about this with her.

6 THE WITNESS: Is -- is this cross or is
7 this a deposition? Because you're treating the --
8 I've never seen somebody treat a deposition exactly
9 like cross.

10 So that might be an appropriate
11 objection if you're, like, cross-examining somebody in
12 court. That is a completely inappropriate question if
13 you're going to - if this is a deposition. So which
14 is it? Is this cross or is this a deposition?

15 BY MS. LEONARD:

16 Q Do you have any other feelings about this
17 deposition that you'd like to put on the record,
18 Mr. Peters?

19 A I just think your -- your objection is
20 frivolous. If you -- you -- the move to strike --
21 there's nobody to strike the answer. It's a
22 deposition. What -- are you going to cross it out?

Page 48

1 Like, what are you -- what are you doing?

2 MR. FUCHS: Let's go off the record.

3 MS. LEONARD: Would you like to take a
4 break?

5 MR. FUCHS: Yeah.

6 THE WITNESS: Yeah.

7 MS. LEONARD: Okay.

8 THE VIDEOGRAPHER: We're going off the
9 record. The time is 2:09 p.m.

10 (Off the record.)

11 THE VIDEOGRAPHER: We're back on the
12 record. The time is 2:13 p.m.

13 BY MS. LEONARD:

14 Q Okay. Mr. Peters, before we took the break,
15 we were discussing memoranda that OPM issued to
16 federal agencies on January 20th, including
17 number -- Exhibit No. 2 that you have in front of you.
18 Do you see that?

19 A Yes.

20 Q Okay. And if you look at that memoranda,
21 you will see language -- actually, we'll come back to
22 that. Ah, there it is. It goes from page 1 to page

1 2.

2 If you look at the bottom of the first page,
3 it says, "By this memorandum, OPM approves the
4 unlimited use of TTCs. This expansion of the use of
5 TTCs is necessary to drive the unusually expansive and
6 transformative agenda the American people elected
7 President Trump to accomplish." Do you see that
8 language?

9 A Yes.

10 Q And did you write that language?

11 A Like I said, my recollection is I drafted --
12 I did the -- drafted this document.

13 Q Okay. And so this reference to the
14 unusually expansive and transformative agenda that
15 President Trump was elected to accomplish -- those are
16 your words?

17 MR. FUCHS: Objection. Asked and
18 answered.

19 THE WITNESS: I -- yeah. I guess those
20 are -- those are -- were -- I initially came up with
21 the idea to use those words.

22 //

1 BY MS. LEONARD:

2 Q Okay. And the expansive and transformative
3 agenda that President Trump is seeking to accomplish
4 includes downsizing the size and number of federal
5 employees; right?

6 MR. FUCHS: Objection. Lack of
7 foundation.

8 THE WITNESS: I can -- that is not what
9 I was thinking about -- I can tell you -- when -- when
10 I chose these words. I think I -- I was -- I wasn't
11 thinking about anything. I don't think I was thinking
12 about any specific part of the agenda.

13 BY MS. LEONARD:

14 Q You weren't thinking about telling agencies
15 to terminate all of their probationary employees
16 because they don't have any appeal rights?

17 MR. FUCHS: Objection. Leading.
18 Objection. Vague.

19 THE WITNESS: And I already answered
20 that. The answer is no, not by this memo or by the
21 other one. This is not a coded reference. This is
22 not, like, coded language, like, go fire probationary

1 employees. It was not -- it was totally not like that
2 at all.

3 BY MS. LEONARD:

4 Q But that is part of the expansive and
5 transformative agenda that you believe in. Isn't it?

6 MR. FUCHS: Objection. Lack of
7 foundation.

8 THE WITNESS: That I believe in? I
9 mean, that -- so what -- the firing -- firing
10 employees is part of the transformational, unusually
11 expansive and transformative agenda that I believe in?

12 MS. LEONARD: That's the question.

13 MR. FUCHS: Objection. Argumentative.

14 THE WITNESS: I have never and would
15 never advocate that people be fired arbitrarily, or
16 fired without some sort of reason. So I -- I
17 don't -- it's not what I believe in at all.

18 BY MS. LEONARD:

19 Q You wouldn't advocate, Mr. Peters, that
20 people be fired for performance when they are not in
21 fact being fired for performance?

22 MR. FUCHS: Objection. Vague.

1 Objection. Relevance. Objection. Lack of
2 foundation.

3 THE WITNESS: No. I would not.
4 Certainly not.

5 BY MS. LEONARD:

6 Q You didn't instruct federal agencies to fire
7 people for performance using a template that says
8 performance, Mr. Peters?

9 MR. FUCHS: Objection. Argumentative
10 Objection. Lack of foundation.

11 THE WITNESS: No.

12 BY MS. LEONARD:

13 Q OPM told federal agencies to use a template
14 that says people are being fired for performance
15 because those employees don't have appeal rights.
16 Isn't that true, Mr. Peters?

17 MR. FUCHS: Objection. Lack of
18 foundation.

19 THE WITNESS: No. I think you're
20 referring to -- I mean, if we want to make this -- and
21 I think we should bring in the actual emails and --
22 and documents that you're referring to at this point.

1 But, I mean, to give some background,
2 we had had requests from agencies for template
3 letters, and so we provided a template letter.

4 But the -- I think the -- certainly the
5 second email provided a very detailed sort of
6 framework for an analysis of -- of employee
7 performance that we encouraged, you know, agencies to
8 use.

9 But it wasn't -- we didn't require --
10 we didn't -- we didn't -- like, there was a lot of
11 language in your -- in your kind of windup that I
12 wouldn't agree with.

13 BY MS. LEONARD:

14 Q When you say we, you mean OPM?

15 A I don't -- I -- in that -- the context of my
16 last answer, I think that we probably referred to OPM.

17 Q Okay. Going back to the memos that were
18 issued on January 20th, there was the -- on the very
19 first day of this new administration, there was the
20 memo with respect to probationary employees, Exhibit
21 1, the memo with respect to TTCs, Exhibit 2.

22 And do you recall whether there were other

1 memos also issued on January 20th instructing federal
2 agencies to do things with respect to their employees?

3 MR. FUCHS: Objection. Vague.

4 THE WITNESS: To -- to my recollection,
5 there were only -- there was this -- there was this
6 memo, which by the way points out that non-career
7 limited SES appointees do not have any appeal rights.

8 There was this and there was the one on
9 probationary periods, administrative leave, and
10 details.

11 BY MS. LEONARD:

12 Q Okay. I think we can short circuit putting
13 all of the memoranda in front of you by doing this.
14 Let's mark this as Exhibit 3.

15 (Exhibit 3 was marked for
16 identification.)

17 And I'll represent to you, Mr. Peters, that
18 Exhibit 3 is a printout from the CHCO website on which
19 transmittals from OPM to the CHCOs are posted by OPM.
20 Are you familiar with that website, Mr. Peters?

21 A Yes.

22 Q And when I say CHCO, you understand that I'm

1 referring to the Chief Human Capital Officer of
2 Federal Agencies?

3 A Yes. And what I -- what I would note is
4 that this is -- these are not just being transmitted
5 to the CHCOs.

6 This is something called the CHCO Council,
7 which -- and so these -- it says at the top, "These
8 are being transmitted --" well, the memorandums are
9 directed to the -- the CHCO HR directors in the heads
10 of agencies. But the -- the memos are public and
11 any -- anybody can look at them.

12 Q Okay. Thank you for that clarification.
13 Let's go -- they're in reverse chron order. And if
14 you go to what I think is page 6 of 11 of the
15 document, you can see the ones listed with the date
16 January 20th. Do you see that there?

17 A Yes.

18 Q Okay. So OPM on January 20th issued not
19 only the two memoranda that we've been looking at, but
20 also something called the Federal Civilian Hiring
21 Freeze. Do you see that?

22 A It says -- it lists here a joint memo

1 between OMB and OPM called Federal Civilian Hiring
2 freeze Guidance.

3 Q Did you write that one before January 20th,
4 as well, Mr. Peters?

5 MR. FUCHS: Objection. Relevance.

6 THE WITNESS: No.

7 BY MS. LEONARD:

8 Q And you see January 21, the next day,
9 there's an additional OPM memo regarding initial
10 guidance regarding DEIA executive orders that was sent
11 to the federal agencies. Do you see that?

12 A Yes. It says, "Initial guidance regarding
13 DEIA executive orders."

14 Q And then on the following day, January 22nd,
15 a guidance on the return to work. Do you see that?

16 A Yes. It says, "Guidance on presidential
17 memorandum, return to in-person work."

18 Q And then on the 24th, another guidance on
19 RIFs of the DEIA offices -- that was sent by OPM to
20 the heads of federal agencies, as well. Do you see
21 that?

22 A Yes. It says, "Guidance regarding RIFs of

1 DEIA offices."

2 Q And then on Monday, January 27th, another
3 joint OMB OPM memorandum regarding return to office
4 implementation plans. Do you see that was sent to
5 federal agencies, as well?

6 A Yes. It says that there's a joint memo from
7 OMB and OPM called Agency Return to Office
8 Implementation Plans.

9 Q Okay. And if you turn the next page,
10 there's another January 27th memorandum -- OPM
11 memorandum, "Re Schedule Policy Career Guidance." Do
12 you see that one?

13 A I think that's the -- the file name. But
14 the formal title was Guidance on Implementing
15 President Trump's Executive Order Titled, Restoring
16 Accountability to Policy Influencing Positions Within
17 the Federal Workforce.

18 Q Also known as the Schedule F memo. Is that
19 fair?

20 MR. FUCHS: Objection. Relevance.

21 THE WITNESS: No. It's -- the memo is
22 the -- was given a title.

1 BY MS. LEONARD:

2 Q Okay. And you wrote that January 27th
3 memorandum, as well, didn't you, Mr. Peters?

4 MR. FUCHS: Same objection.

5 THE WITNESS: No.

6 BY MS. LEONARD:

7 Q You did not?

8 A No. I did not.

9 Q Okay. But this is all in the first week.
10 These are all memorandums, as you just testified, that
11 OPM is sending to the CHCOs, as well as the agency
12 heads; correct?

13 A These are all memos that were -- I believe,
14 that were directed to heads of departments and
15 agencies, CHCOs, deputy CHCOs, HR directors, perhaps
16 others. I don't know what the distribution was for
17 the OMB-specific memos.

18 Q And in this same time period, you are not
19 aware of any memoranda that were issued from the heads
20 of agencies to OPM about federal employment, are you,
21 Mr. Peters?

22 MR. FUCHS: Objection. Lack

1 foundation. Objection. Relevance.

2 MS. LEONARD: Counsel, I'm going to
3 just say this once. Relevance is not a proper
4 objection in a deposition, and I would ask that you
5 read the standing order that Judge Alsup has on this
6 specific point, and I have a copy for you if you need
7 it.

8 But go ahead. So let me ask the
9 question again so we get a clear answer.

10 THE WITNESS: Yeah. I mean, it's --
11 it's a rhetorical question because there is -- you
12 know, there's certain regulatory -- you know, there's
13 a certain jurisdiction that OPM has, and so -- but,
14 you know, there's -- I don't know.

15 But, you know, the agencies also have
16 powers to send memos to their employees. They just
17 don't send the -- you know, they just don't send them
18 to OPM.

19 So agencies were sending lots of memos
20 to their employees during the same time period,
21 probably more than are listed here for OPM sending to
22 the heads of departments and agencies.

1 BY MS. LEONARD:

2 Q Mr. Peters, you're not aware of any
3 memoranda whereby agencies provided instruction to OPM
4 during the first week of the administration regarding
5 federal employment, are you?

6 A If -- no -- I am not aware, but that would
7 be a non-sequitur. I mean, it -- like, I -- I don't
8 even know why -- there would be no reason for them to
9 do that.

10 But if -- if the idea is that the agencies
11 are -- are disempowered, the agencies were sending
12 numerous memos to their own employees during this
13 time.

14 Q Mr. Peters, in addition to these memos, OPM
15 sent out other government-wide instructions with
16 respect to federal employees during the first few
17 weeks of the administration; correct?

18 A What do -- what do you mean?

19 Q You're aware of other instructions that OPM
20 sent out to federal agencies regarding federal
21 employees during the first few weeks of the
22 administration --

Page 61

1 MR. FUCHS: Objection. Vague.

2 THE WITNESS: So, and I think that this
3 is a good place to let -- let me take -- take the
4 break, but if you want to say -- do I recall -- like,
5 are all -- is this an authentic printout of all of the
6 memos that OPM has posted to the CHCO Council page?
7 It -- you know, I have no reason to doubt that.

8 BY MS. LEONARD:

9 Q That's not -- that is not the question. You
10 can set that aside. I was actually asking about your
11 knowledge of other instructions that OPM has sent out
12 to federal agencies regarding federal employment.

13 A Yeah. OPM has -- has other ways, other than
14 the CHCO Council of sending out guidance. I
15 don't -- I'm not aware of whether everything is
16 specifically posted on the CHCO Council page.

17 Q For example, OPM created a server in which
18 it could -- from which OPM could send out emails to
19 all federal employees during the first few weeks of
20 this administration, did it not?

21 MR. FUCHS: Objection. Lack of
22 foundation.

Page 62

1 THE WITNESS: OPM didn't -- did not
2 create any server.

3 Can we go off the record?

4 THE VIDEOGRAPHER: -- 2:28 --

5 THE WITNESS: Yeah. 2:28. Yeah.
6 Let's go.

7 MS. LEONARD: Okay.

8 THE VIDEOGRAPHER: We're going off the
9 record. This is the end of media unit 1. The time is
10 2:28 p.m.

11 (Off the record.)

12 THE VIDEOGRAPHER: We're back on the
13 record. This is the beginning of media unit 2. The
14 time is 3:29 p.m.

15 BY MS. LEONARD:

16 Q Okay. Mr. Peters, one of your
17 responsibilities as a senior advisor to the director
18 of OPM includes meeting with CHCOs and deputy CHCOs.
19 Is that right?

20 A I don't know that that's my responsibility.
21 I've done it. I've certainly spoken at the CHCO
22 Council before.

1 Q And the CHCO Council meetings are held
2 typically by videoconference. Is that right?

3 A They have been typically held by
4 videoconference, you know? Yeah.

5 Q And since January 20th, the CHCO Council
6 videoconferences have been held with some frequency.
7 Is that fair to say?

8 MR. FUCHS: Objection. Form.

9 THE WITNESS: Yes. The CHCO Council
10 has held lots of different sessions, mostly relating
11 to administering the Deferred Resignation Program.

12 BY MS. LEONARD:

13 Q And at one point in time, in early February,
14 was the CHCO Council meeting with OPM every day?

15 A Yes. During the time around the Deferred
16 Resignation Program, the CHCO Council was meeting
17 every day. And what was happening was, as is supposed
18 to happen at the CHCO Council -- is CHCOs were asking
19 questions, providing input, you know, and we were kind
20 of engaged in a -- in a dialogue with the CHCOs as
21 they administered this -- this program.

22 And, you know, we wanted to do it in a way

1 that was consistent across the government, was fair to
2 the employees -- you know, complied with the intent.
3 And somehow, you know, we -- we made it work.

4 It was -- but it was a group effort. It
5 took a lot of work from the CHCOs, and I think the
6 CHCOs appreciated having the daily availability where
7 they could ask questions and -- and also provide their
8 own guidance to -- to OPM as we kind of worked our way
9 together through administering the Deferred
10 Resignation Program.

11 Q In fact, on some of those videoconference
12 meetings with the CHCOs, you read from a script;
13 correct?

14 MR. FUCHS: Objection. Form.

15 THE WITNESS: I -- I would on a few of
16 them. So if there was, like, a -- a complicated legal
17 issue, we would, you know, have a script ready.

18 And on a couple of -- and on the -- the
19 one call that we did regarding -- well, the one on the
20 Friday -- the -- the February 14th, I certainly read
21 from a script.

22 //

1 BY MS. LEONARD:

2 Q You also held videoconference meetings with
3 other agency officials during your time since January
4 20th in this position; correct?

5 MR. FUCHS: Objection. Form.

6 THE WITNESS: We -- as is pertinent to
7 this litigation, we had a February 13th -- we had
8 three calls with the chiefs of staff, one on Friday,
9 one on Monday, and one on Thursday regarding
10 probationary employees.

11 BY MS. LEONARD:

12 Q When you say one on Friday -- one -- sorry.
13 What -- Friday? What we -- what? Thursday, Friday
14 and Monday? And what dates are you talking about?

15 A My recollection is that we had three very
16 short calls, the first being Friday, February 7th, the
17 second being Monday, February 10th, and then the third
18 being Thursday, February 13th.

19 Q With the chiefs of staff and other political
20 appointees at federal agencies?

21 MR. FUCHS: Objection. Form.

22 THE WITNESS: I think that's -- that's

1 probably fair. It was probably about maybe 7 to 15.
2 It might have been more.

3 BY MS. LEONARD:

4 Q Okay. Let's mark this as the next -- this
5 is Exhibit 4.

6 (Exhibit 4 was marked for
7 identification.)

8 Mr. Peters, you've been handed what's been
9 marked as Exhibit 4. It is a document called
10 Defendant's Disclosure of February 13, 2025, OPM Call
11 Participants.

12 And if you turn to the second and third page
13 of this document, there are a list of individuals who
14 are listed as having participated in a February 13,
15 2025, call with OPM. Do you see that?

16 A Yes.

17 Q And your name is on this list; correct?

18 A Yes. I was -- I participated on -- in
19 this -- in this call.

20 Q And is this February -- the list of
21 participants here referring to the February 13th call
22 that you were just describing with the chiefs of staff

1 and other political appointees?

2 A Yeah. It looks like there were about 30 --
3 I'm -- my rough count is about 30 people. I think the
4 invitation was -- was to the chiefs of staff and DOGE
5 leads.

6 Q You can set that aside. After OPM issued
7 the January 20th memo in which it instructed the
8 agencies to provide the list of every probationary
9 employee by January 24th, you participated in meetings
10 with the CHCOs at which that instruction was
11 discussed; correct?

12 MR. FUCHS: Objection. Form.

13 THE WITNESS: To the extent we
14 discussed it with the CHCOs before February 7th, it
15 was in passing, and it wasn't substantive.

16 The -- I -- the only -- the reason why
17 we -- it came to my radar on February 7th was because
18 I had learned that the Small Business Administration
19 planned to terminate all of its probationary employees
20 like that day immediately.

21 And so that's why we scheduled -- so
22 I -- the call was very -- on February 7th, which

Page 68

1 didn't include all of the different participants on
2 this -- on this list -- was scheduled, like, very
3 quickly in the afternoon I -- as I recall, after I
4 learned that about SBA.

5 BY MS. LEONARD:

6 Q Well, let's go back a little bit back in
7 time, because the deadline that was given in the memo
8 was January 24th.

9 A Yes.

10 Q There were calls before January 24th with
11 the CHCOs in which you participated to discuss the
12 requirement that they submit lists of probationary
13 employees; correct?

14 A No. I don't know where you're -- where
15 that's coming from, but I don't recall any calls like
16 that.

17 Q And in fact, you had a Zoom call with the
18 CHCOs the very next day, January 21st. Did you not?

19 MR. FUCHS: Objection. Form.

20 THE WITNESS: I -- if we did, I don't
21 recall being on that -- that particular CHCO call.

22 //

1 BY MS. LEONARD:

2 Q And in fact, the CHCOs expressed concern
3 about that January 24th deadline, because it simply
4 was not possible to compile lists of all of their
5 probationary employees and provide them to OPM by that
6 date? Do you recall that?

7 MR. FUCHS: Objection. Form.

8 THE WITNESS: I was not on any call on
9 January 21st like -- that was like that.

10 BY MS. LEONARD:

11 Q Do you recall if CHCOs -- on any meeting,
12 expressing concern about the requirement that they
13 compile lists of every probationary employee and
14 submit it to OPM?

15 MR. FUCHS: Objection. Form.

16 THE WITNESS: No. I don't.

17 BY MS. LEONARD:

18 Q If a CHCO were to testify that they
19 expressed those concerns directly to you, would they
20 be lying?

21 MR. FUCHS: Objection. Form.

22 THE WITNESS: Directly to me, Noah

1 Peters, that they couldn't get -- that they couldn't
2 compile the lists by January 24th? I don't recall
3 having any conversations like that with any CHCO.

4 BY MS. LEONARD:

5 Q So it might be true. You just don't
6 remember?

7 MR. FUCHS: Objection. Form.

8 THE WITNESS: I don't remember, and I
9 don't think it's true.

10 BY MS. LEONARD:

11 Q Okay. So they would -- CHCO -- if they
12 testified that way, they'd be lying?

13 MR. FUCHS: Objection. Form.

14 THE WITNESS: I don't recall any direct
15 conversations with CHCOs in the period of January 20th
16 to January 24th, where they expressed concern about
17 not being able to compile the list of the probationary
18 employees.

19 BY MS. LEONARD:

20 Q Well, you were aware that OPM had never
21 asked for such lists to be provided to it by any
22 federal agency before; correct?

Page 71

1 MR. FUCHS: Objection. Form.

2 THE WITNESS: I was aware of what?

3 BY MS. LEONARD:

4 Q That OPM had never asked the agencies to
5 provide these lists of every probationary employee
6 before?

7 MR. FUCHS: Same objection.

8 THE WITNESS: No. I was not aware of
9 that.

10 BY MS. LEONARD:

11 Q Because the CHCOs told you that; right?

12 MR. FUCHS: Same objection.

13 THE WITNESS: No. The CHCOs
14 never -- again, I wasn't on all of the -- the CHCO
15 calls, so I don't want to say that something never
16 happened because there might have been a call that I
17 wasn't on in the -- especially, I -- as I recall, I
18 only started participating in the CHCO calls after the
19 Deferred Resignation Program on January 28th.

20 For the first week or so, I wasn't on
21 all of the calls or any of the calls. So I don't know
22 what was said or if CHCOs had said, we've never --

1 we've never done this before. I just -- I just don't
2 know.

3 BY MS. LEONARD:

4 Q So I believe you just testified a little
5 earlier that you were on some CHCO calls before
6 January 24th?

7 A No. I -- I don't recall being on any CHCO
8 calls before January 24th. My recollection -- my
9 strong recollection is I only started participating in
10 them after the -- after the Deferred Resignation
11 Program was rolled out on January 28th.

12 Q So the Deferred Resignation Program that was
13 rolled out on January 28th was an OPM program whereby
14 every federal employee was made an offer that they
15 could resign from federal employment; correct?

16 MR. FUCHS: Objection. Form.

17 THE WITNESS: The offer was that they
18 could take advantage of nine months -- or was
19 it -- would've been from February -- it would've been
20 from January.

21 So it would've been eight months of
22 administrative leave along with -- and then there were

1 also -- I think, added into that eventually there was
2 also flexibility along -- around voluntary early
3 retirement authority that was later included.

4 But the -- the idea was that people who
5 did not want to return to the office or just didn't
6 want to, for whatever reason, continue their federal
7 service, could take advantage of a voluntary program
8 that was announced government-wide, whereby they
9 could, you know, opt in and -- and not -- not have to
10 return to the office and could kind of just exit
11 from -- from their federal employment, which was a far
12 more generous offer than I think was ever made to
13 employees in the federal service and was much more
14 generous than any comparable private sector offer.

15 BY MS. LEONARD:

16 Q And OPM sent that out via an OPM email
17 address on January 28th to all federal employees;
18 correct?

19 MR. FUCHS: Objection. Form.

20 THE WITNESS: Yes.

21 BY MS. LEONARD:

22 Q And the agencies didn't even know about it

1 before OPM did it; right?

2 MR. FUCHS: Objection. Form.

3 THE WITNESS: I don't know what the
4 agencies knew or didn't know.

5 BY MS. LEONARD:

6 Q You didn't tell any of the CHCOs or chiefs
7 of staff about the Deferred Resignation Program before
8 the email went out, did you, Mr. Peters?

9 MR. FUCHS: Objection. Form.

10 THE WITNESS: I certainly did not.

11 BY MS. LEONARD:

12 Q And the memo that was posted by OPM via the
13 CHCO transmittal to heads and acting heads of
14 departments was dated January 28th that provided
15 guidance regarding the email that had gone out. Do
16 you recall that?

17 A Yes. I recall that we -- we sent out
18 guidance to agencies regarding the Deferred
19 Resignation Program.

20 Q And do you recall what the original
21 expiration date was for the deferred resignation
22 offer?

1 A The -- the original -- I think it might have
2 been initially -- I know it was held open for -- for a
3 few days longer. I couldn't -- it was maybe
4 February -- this is, like, a memory quiz.

5 It was maybe February 6th, and then it was
6 the 12th, or something like that. February 5th and
7 then the 12th. I don't know.

8 Q Okay. You don't recall off the top of your
9 head whether it was February 6th?

10 A That may be right. I -- yeah.

11 Q Well, let's mark this as Exhibit 5.

12 (Exhibit 5 was marked for
13 identification.)

14 This is the January 28th Deferred
15 Resignation Memorandum. And I'm not going to ask you
16 about the details.

17 I'll just direct your attention to the third
18 page, Q and As, which talk about the deadline, when
19 the court reporter hands it to you. And do you see
20 there, there's a reference for the period between
21 January 28, 2025, and February 6, 2025?

22 A Yes. And this refreshes my recollection

Page 76

1 that the original closing date was February 6, 2025.

2 Q And is it your testimony that you were not
3 aware of or involved -- well, I'll ask it one more
4 time.

5 Were you aware of any of the federal agency
6 submissions pursuant to the January 20th memorandum
7 requiring agencies to give lists of all their
8 probationary employees prior to February 7th?

9 MR. FUCHS: Objection. Form.

10 THE WITNESS: No.

11 BY MS. LEONARD:

12 Q You did not have access to the email
13 accounts on to which those were being sent?

14 MR. FUCHS: Objection. Form.

15 THE WITNESS: I just never saw them. I
16 don't know whether I had access or not. I -- I
17 don't -- I don't think that I was included on -- on
18 the access.

19 BY MS. LEONARD:

20 Q You were not responding to questions that
21 agencies were sending in with respect to their
22 submissions, Mr. Peters?

Page 77

1 MR. FUCHS: Objection. Form.

2 THE WITNESS: Their submissions
3 regarding?

4 BY MS. LEONARD:

5 Q Probationary employee lists?

6 A No. Except on -- except on maybe, like, if
7 you consider the February 14th call and maybe some --
8 on some of the other calls -- we might have had
9 questions about probationary employees, but it
10 would've been after the -- my strong recollection is
11 that I didn't start participating in the CHCO calls
12 until after the Deferred Resignation Program.

13 And I wasn't providing one-on-one guidance
14 regarding the lists to CHCOs or to anyone else at
15 federal agencies.

16 Q Were you responding to any of the emails
17 that agencies sent in about the probationary employee
18 issue prior to February 7th?

19 MR. FUCHS: Objection. Form.

20 THE WITNESS: I don't believe I -- I
21 would not have responded directly to the agencies, and
22 I don't remember fielding any questions about the

1 lists before. Yeah. I don't -- I don't remember,
2 like, fielding any of those questions.

3 BY MS. LEONARD:

4 Q And when you say you were not involved in
5 the CHCO meetings until after the Deferred Resignation
6 Program, do you mean after it went out on January
7 28th, or after it was closed on February 6th?

8 A No. I think my recollection is that for,
9 like, the first week of my employment, I didn't
10 participate in the CHCO calls, and then I began
11 getting involved with the CHCO calls because -- after
12 the Deferred Resignation Program is my -- my strong
13 recollection.

14 Q Meaning after it went out on January 28th or
15 after it was to close on February 6th?

16 A No. After the initial -- after it went out
17 on January 28th.

18 Q Okay. And Mr. Peters, February 7th, the day
19 after the deferred resignation deadline was to expire,
20 was the originally planned date for the termination of
21 probationary employees; correct?

22 MR. FUCHS: Objection. Form.

1 THE WITNESS: No.

2 BY MS. LEONARD:

3 Q There was a relationship between the
4 expiration of the Fork in the Road Deferred
5 Resignation Program and the termination of
6 probationary employees wasn't there?

7 MR. FUCHS: Objection. Form.

8 THE WITNESS: Not to my knowledge. No.

9 BY MS. LEONARD:

10 Q You told CHCOs that on the calls with CHCOs,
11 didn't you, Mr. Peters?

12 MR. FUCHS: Objection. Form.

13 THE WITNESS: I don't remember saying
14 anything -- anything like that.

15 BY MS. LEONARD:

16 Q And if you -- if a CHCO testified that you
17 personally told them that the plan deadline for
18 terminating probationary employees was February 7th,
19 are you saying that they would be lying?

20 MR. FUCHS: Objection. Form.

21 THE WITNESS: There was no termination
22 date given to CHCO's on at that -- on any time, but

1 that never happened.

2 BY MS. LEONARD:

3 Q And you're aware that the District Court in
4 Massachusetts issued a TRO that extended the deadline
5 for the Deferred Resignation Program on February 6th?
6 Are you familiar with that?

7 MR. FUCHS: Objection. Form.

8 THE WITNESS: I'm familiar that there
9 was a TRO, but the -- the thing about giving a -- a
10 deadline to the CHCOs to fire people on February
11 7th -- 7th is completely false.

12 BY MS. LEONARD:

13 Q And you say that because your testimony is
14 you did not do that?

15 MR. FUCHS: Objection. Form.

16 THE WITNESS: I was at those calls and
17 there was no deadline like that given.

18 BY MS. LEONARD:

19 Q You were at all the calls?

20 A I was at the calls between -- after the
21 Deferred Resignation Program happened -- was announced
22 on January 28th.

Page 81

1 Q And in fact, the CHCOs asked for you to put
2 those orders in writing, didn't they?

3 MR. FUCHS: Objection. Form.

4 THE WITNESS: No. No CHCOs made
5 that -- there was never an order, and there was never
6 a request that an order be given in writing.

7 BY MS. LEONARD:

8 Q And if a CHCO were to testify that you
9 personally were asked to put those orders in writing,
10 and you said no, would they be lying?

11 MR. FUCHS: Objection. Form.

12 THE WITNESS: Yeah. They would be
13 lying. I never asked anyone to put the CHCOs -- I
14 don't recall any CHCO asking me to put an order in
15 writing.

16 BY MS. LEONARD:

17 Q And do you recall that the date -- I believe
18 you mentioned it earlier -- the date that the Fork
19 program actually ended up closing because the TRO was
20 lifted?

21 A The date that the program closed was
22 February 12th.

1 Q And on February 12th, OPM then ordered the
2 agencies to commence termination of probationary
3 employees; correct?

4 MR. FUCHS: Objection. Form.

5 THE WITNESS: No. What -- OPM on
6 February 12th sent an email calling for the agencies
7 who had not gone through the exemption process to
8 separate from the employees that they had identified
9 as wanting to terminate.

10 BY MS. LEONARD:

11 Q Okay. Let's look -- let's mark this as
12 Exhibit 6.

13 (Exhibit 6 was marked for
14 identification.)

15 All right. Mr. Peters, you've been handed
16 what has been marked as Exhibit 6. It's an email from
17 an email address called Tracking to James Sullivan and
18 Amanda Scales with a copy to you and Brian Bjelde,
19 subject line, "Action Due 2/13 Probationary Employee
20 Actions." Do you see that?

21 A Yes.

22 Q And do you recognize this email, Mr. Peters?

1 A Yes.

2 Q Did you write this email?

3 A No.

4 Q But you received it?

5 A Yes. I'm on the CC line.

6 Q Okay. And the subject line, "Action due
7 2/13" -- the action in that subject means
8 terminations; right?

9 MR. FUCHS: Objection to form.

10 THE WITNESS: In this context, it looks
11 like it does.

12 BY MS. LEONARD:

13 Q And you see the bold statement there in the
14 second paragraph. It says, "Please partner with your
15 CHCO to action those you know you wish to separate
16 from by the end of the day tomorrow, 2/13/2025, using
17 the attached template letter." You see that?

18 A Yes. And it says, "Those that you wish to
19 separate from."

20 Q Sure. But this is not an email from an
21 agency telling OPM that the agency is going to action
22 these employees. Is it?

1 MR. FUCHS: Objection. Form.

2 THE WITNESS: Well, the agencies had
3 been preparing lists of employees that they wanted to
4 keep and wanted to separate from over the past couple
5 weeks before that.

6 And so this was more just giving --
7 giving a steer that, you know, since you've indicated
8 you wish to separate from these employees, you know,
9 we are kind of encouraging you to act.

10 So, you know, but it -- throughout the
11 process, they could have exact -- they had full
12 opportunity to exempt themselves, and some agencies
13 did exempt all of their probationary employees from
14 this kind of review process.

15 BY MS. LEONARD:

16 Q Mr. Peters, I believe you testified that you
17 did not receive or see any of the lists that the
18 agencies were sending to OPM.

19 So how is it that you're testifying that the
20 agencies were sending lists of employees they wish to
21 keep and which to separate from?

22 MR. FUCHS: Objection. Form.

Page 85

1 THE WITNESS: Well, I mean, that's what
2 we had asked them in the January 20th memo. So I --
3 but I didn't -- I didn't lay eyes on -- on the lists
4 that they were sending.

5 BY MS. LEONARD:

6 Q So the January 20th memo, which is Exhibit
7 1, says, "Agencies should identify all employees on
8 probationary periods and send a report to OPM listing
9 all such employees."

10 Mr. Peters, how is it that you're aware that
11 agencies were sending lists of employees that you
12 claim that they wanted to keep and wanted to separate
13 if you didn't see any of the lists?

14 MR. FUCHS: Objection. Form.

15 THE WITNESS: I just was -- my
16 awareness of what was happening at the time was that I
17 was aware that agencies were sending lists, but I just
18 didn't look at them.

19 BY MS. LEONARD:

20 Q So you don't know whether agencies were
21 actually, in fact, sending lists to OPM of employees
22 they wish to keep and wish to separate? That was just

1 your speculation a moment ago?

2 MR. FUCHS: Objection. Form.

3 THE WITNESS: No. I -- I knew, but I
4 just didn't -- but I just didn't look at them
5 myself -- myself.

6 BY MS. LEONARD:

7 Q And what is the basis of your knowledge that
8 agencies were sending lists of employees they wish to
9 keep and wish to separate as opposed to what this
10 memorandum says, which is send lists of all of your
11 probationary employees?

12 MR. FUCHS: Objection. Form.

13 THE WITNESS: Well, what this -- this
14 memorandum says -- and is that -- in addition,
15 agencies should promptly determine whether those
16 employees should be retained at the agency.

17 My understanding from talking to other
18 people at the office was that the lists at some point
19 became -- that those two requests were kind of
20 combined into a single -- into a single list from the
21 agency.

22 //

1 BY MS. LEONARD:

2 Q And who told you about those requests from
3 the agencies?

4 A Who told me about the requests?

5 Q You just used the word request, Mr. Peters.
6 Who told you about the requests from agencies to keep
7 their employees?

8 A Again, so I -- sometimes the requests would
9 go to -- so in a couple instances, like, somebody -- a
10 few instances, somebody asked me, "Hey, you know, do
11 we -- we'd like to keep all of our probationary
12 employees."

13 And I -- and I said, "Yes." That was from
14 EEOC. And then I remember reviewing some sort of
15 exemption request from the nuclear -- some sort of
16 nuclear inspection agency. And we also granted that
17 request for a full exemption.

18 Q Any other agencies that you recall OPM
19 granting the request for an exemption?

20 MR. FUCHS: Objection. Form.

21 THE WITNESS: Yes. The Department of
22 Justice was another one.

1 BY MS. LEONARD:

2 Q Any others?

3 A I'm not aware of all the requests, nor am I
4 aware of all the -- of all the grants. I know that
5 we -- we certainly exempted the FAA air traffic
6 controllers.

7 And there were other -- I think that we --
8 the general -- like, a general theme at that time was
9 that the exemptions -- you know, you -- you can
10 certainly exempt people who were exempt from the
11 hiring freeze.

12 So, you know, categories where things were
13 going to break or there was going to be mission -- you
14 know, mission critical tasks that the agency should --
15 should exempt in those cases and should ask for the
16 exemption.

17 Q And at the bottom of the email on February
18 12th, you see the last bullet where it says, "Through
19 the exemptions process." Is the process you just
20 described the exemptions process referred to here?

21 A Yes. But the exemptions process -- and I
22 don't know that it was limited to the criteria here.

Page 89

1 I -- so I think that -- so some agencies just exempted
2 all of their employees.

3 Q Some agencies sent that information to OPM,
4 and OPM granted that request?

5 MR. FUCHS: Objection. Form.

6 THE WITNESS: I think that was probably
7 how -- how it was phrased. But, you know, if an
8 agency wanted to exempt employees, there was nothing
9 OPM could do to say, "No -- no -- don't -- you can't."

10 So, you know, it was kind of structured
11 that way. But at any time an agency could have just
12 said, "We're not -- we're not going to do anything."
13 And in fact, some agencies just ignored it.

14 BY MS. LEONARD:

15 Q And you don't work at a federal agency other
16 than OPM, do you, Mr. Peters?

17 A No. I don't.

18 Q So you don't have personal knowledge of
19 whether the agencies, in fact, believed they could
20 ignore the orders from OPM, do you?

21 MR. FUCHS: Objection. Form.

22 THE WITNESS: I don't have personal

Page 90

1 knowledge of what people at other agencies were --
2 were thinking or were not thinking. But I do -- I
3 will -- I do know that the -- we had no power to
4 require people to go ahead with and participate in
5 this -- this exercise.

6 And I think -- you know, I think
7 it's -- that was always -- that was always known to
8 the agencies. But, you know, a lot of people wanted
9 to -- you know, people wanted to be on board with, you
10 know, what other agencies were doing.

11 BY MS. LEONARD:

12 Q Mr. Peters, can you point me to a single
13 document from January or February 2025, in which OPM
14 told any agency they did not have to participate in
15 the terminations of their probationary employees?

16 MR. FUCHS: Objection. Form.

17 THE WITNESS: I -- I cannot, which --
18 but I think that, like I said, in many cases the
19 agencies just said, you know, we're -- we're exempting
20 themselves, or they would -- you know, they would
21 submit -- like, for example, in the case of the
22 Department of Justice, they just said, "We're

1 exempting all of our probationary employees."

2 BY MS. LEONARD:

3 Q And you just described that in your earlier
4 testimony; correct?

5 A I described the fact that we obviously had,
6 you know -- if -- if an agency didn't want to take
7 termination actions, there was no -- there was no
8 mechanism for OPM to require them to do things that
9 they didn't want to do.

10 Q Because it would, in fact, be unlawful if
11 OPM ordered them to terminate their probationary
12 employees; right? You knew that.

13 MR. FUCHS: Objection. Form.

14 THE WITNESS: Well, it wasn't -- that
15 assumes that we would've wanted to -- may impose some
16 sort of requirement, and we didn't -- we didn't want
17 to impose any requirement like that.

18 It's not -- we weren't like, oh, we
19 really wanted to, but the law said we couldn't. I
20 mean, it just -- that was just the -- the framework
21 was that there were -- you know, that agencies
22 could -- had to take or not take these actions.

1 BY MS. LEONARD:

2 Q And can you point me to a single document
3 from OPM to a federal agency from January or February
4 2025, where OPM told the agencies it was not a
5 requirement that they do this?

6 MR. FUCHS: Objection. Form.

7 THE WITNESS: Point you to a single
8 document where the -- where OPM told agencies that
9 this was not a requirement?

10 Well, we -- we certainly -- on the
11 March 5th revision to this -- to this memo, we
12 certainly made that clear.

13 And I think what we said was there --
14 you know, we're clarifying that there is not, and has
15 never been a requirement to terminate any specific
16 probationary employee or employees.

17 BY MS. LEONARD:

18 Q And prior to the March 5th revision to the
19 January 20th memo, can you point me to a single
20 document where OPM told agencies they did not have to
21 terminate their probationary employees?

22 MR. FUCHS: Objection. Form.

Page 93

1 THE WITNESS: Can I -- can I point you
2 to a specific document where -- where we said that?

3 I don't know all of the documents at
4 this time, but I'm just -- you know, the understanding
5 throughout the process was that we -- the agencies --
6 you know, I think it's -- it said here, "The ones you
7 wish to separate from." It was always, which ones did
8 they wish to separate from.

9 BY MS. LEONARD:

10 Q And the next sentence actually says, "The
11 separation date should be either immediately or as
12 soon as possible consistent with applicable agency
13 policies, including those in CBAs."

14 Can you point me to a single document where
15 OPM told agencies they did not have to separate their
16 probationary employees immediately or as soon as
17 possible?

18 MR. FUCHS: Objection. Form.

19 THE WITNESS: I think that this -- this
20 was our -- you know, our strong encouragement of the
21 agencies, saying this is what you should -- we should
22 be doing as kind of the completion of the exemptions

1 and list making process.

2 BY MS. LEONARD:

3 Q This document does not say strong
4 encouragement, does it, Mr. Peters?

5 MR. FUCHS: Objection. Form.

6 THE WITNESS: Well, I -- I mean, it
7 says, "Should." It doesn't say must or are required
8 to.

9 And the reason why it says that is
10 because we didn't -- we didn't -- obviously didn't
11 have the power to direct performance-based
12 terminations using an email.

13 BY MS. LEONARD:

14 Q You are aware that no notice had been
15 provided to the employees that OPM was telling federal
16 agencies that they should terminate immediately?

17 MR. FUCHS: Objection. Form.

18 THE WITNESS: No notice was provided
19 what?

20 BY MS. LEONARD:

21 Q To the employees?

22 MR. FUCHS: Same objection.

1 THE WITNESS: To the employees? To the
2 employees --

3 BY MS. LEONARD:

4 Q You're aware that no notice had been
5 provided to employees that OPM was telling agencies
6 they had to fire immediately?

7 MR. FUCHS: Same objection.

8 THE WITNESS: Sorry. Say -- no notice
9 was being provided to?

10 BY MS. LEONARD:

11 Q I can rephrase it.

12 A Yeah.

13 Q You're aware, Mr. Peters, that no notice had
14 been provided to employees that OPM was telling
15 agencies to fire immediately? You knew that?

16 MR. FUCHS: Objection. Form.

17 THE WITNESS: We -- we were not in
18 the -- so, I -- I understand, I -- I guess with the
19 government-wide email, there were -- there was now
20 kind of a mechanism for -- are you trying to tie the
21 government-wide email to like -- to this -- to the
22 probationary actions?

1 BY MS. LEONARD:

2 Q Well, we can start with that. OPM had
3 certainly not used that government-wide email to tell
4 probationary employees that they were going to be
5 fired; correct?

6 MR. FUCHS: Objection. Form.

7 THE WITNESS: Well, did we use the
8 government-wide email to tell probationary employees
9 that they would be fired?

10 I think that -- that -- I mean, the --
11 the fact that no -- and the fact that we didn't do
12 that underscores that this was an agency-driven
13 process where, you know, we were having discussions
14 with agencies about actions that the agencies would
15 or -- or would not take.

16 BY MS. LEONARD:

17 Q You can't point me to any document or
18 communication from an agency where they said, "We
19 would like to submit to you lists of the people that
20 we have fired," can you?

21 MR. FUCHS: Objection. Form.

22 THE WITNESS: We would like -- well, I

1 mean, we sent the -- the -- as you've pointed out, we
2 sent the guidance on the very first day of the new
3 administration.

4 BY MS. LEONARD:

5 Q And so in this email on February 12th, OPM
6 is now telling agencies that they should send updated
7 lists after actioning. Do you see that? The
8 second -- the -- sorry -- the third paragraph.

9 A Yeah. And I -- I'd like to point out that
10 we -- there was no -- like, we -- we issued the memo
11 on the -- on the very first day.

12 So there was no opportunity for agencies to
13 come to us and say, you know, "OPM, please engage
14 in -- in a list making exercise or a review process."

15 But, you know, the agencies began taking
16 action regarding -- taking action -- began terminating
17 probationary employees before 2/13.

18 So, like I said, SBA had decided to
19 terminate probationary employees on February 7th, was
20 my understanding.

21 And then the Department of Agriculture, and
22 I believe the Department of the Interior, had already

1 decided to start terminating probationary employees
2 before this February 13th email.

3 Q You are not -- you don't have personal
4 knowledge of any decision made by SBA, Department of
5 Agriculture, or Interior, to terminate probational
6 employees; correct?

7 A I do. No. I do. They told me about it
8 when -- so I -- or I learned about it on February 7th,
9 at least in the case of the Small Business
10 Administration.

11 Q Did the Small Business Administration tell
12 you directly or did you, "Learn about it?"

13 MR. FUCHS: Objection. Form.

14 THE WITNESS: I think a request -- I
15 think he -- there was a request for a form letter
16 because they had decided to take the action to -- they
17 had decided to -- to terminate their probationary
18 employees.

19 BY MS. LEONARD:

20 Q Because they understood that the original
21 deadline for doing so was February 7th, the day after
22 the Fork program closed; correct?

Page 99

1 MR. FUCHS: Objection. Form.

2 THE WITNESS: No. That's not correct
3 at all. There was never a deadline that was set for
4 any probationary terminations.

5 BY MS. LEONARD:

6 Q And again, did someone ask you directly for
7 this form letter?

8 MR. FUCHS: Objection. Form.

9 THE WITNESS: I was asked -- I -- I was
10 asked for form letters. Yes.

11 BY MS. LEONARD:

12 Q By whom?

13 A I recall it being Wes Coopersmith.

14 Q And who was that?

15 A That was the SBA chief of Staff.

16 Q And when you say USDA and DOI, you believe
17 they started terminating people on February 12th. Is
18 that right?

19 A No. They started -- I believe that they had
20 been planning to do it before February 12th and had
21 made -- had made those determinations before then.

22 Q Again, because the original deadline that

Page 100

1 OPM gave the agencies was February 7th; correct?

2 MR. FUCHS: Objection. Form.

3 THE WITNESS: No. We never gave a
4 February 7th deadline to agencies.

5 BY MS. LEONARD:

6 Q And your knowledge of the USDA and DOI comes
7 directly from individuals at those agencies, or did
8 you hear about it through someone at OPM?

9 MR. FUCHS: Object to form.

10 THE WITNESS: No. It comes directly
11 from individuals at those agencies.

12 BY MS. LEONARD:

13 Q Who at the USDA told you that they were
14 preparing to terminate probationary employees?

15 A Well, we discussed it on this call that
16 happened on the 13th. She shared -- Kaylee Brewer
17 [ph] shared her experiences in terminating the
18 employees, 'cause that process was underway at
19 Agriculture. I believe that they had to submit --
20 they had to, like, pull them back and submit it again.

21 Q And Department of Interior -- who told you
22 that they had -- that they were planning to terminate

1 probationary employees?

2 A If I can look at the disclosure on the -- of
3 the call participants.

4 Q It should be Exhibit -- you've got it.

5 A I think it -- it was -- as I recall, I think
6 it was Tyler from Interior spoke about it.

7 Q Tyler?

8 A It could have been. It could have been
9 somebody -- one of the other three -- two people who
10 are identified.

11 Q No other agencies had told you personally
12 that they were planning to terminate their
13 probationary employees before this February 12th
14 communication; correct?

15 MR. FUCHS: Objection. Form.

16 THE WITNESS: I think I might have
17 known that GSA, Education -- GSA, Education, and
18 perhaps also HUD.

19 BY MS. LEONARD:

20 Q And that was based on the CHCO calls that
21 you had been having since you began participating?

22 A No. That was not. It was just based on

1 hearing things around -- around the office and
2 speaking with some of the individuals.

3 Q Speaking with some of the individuals?

4 A At the agencies.

5 Q At the agencies in one-on-one conversations?

6 A Yeah. I think sometimes they would -- they
7 would call and ask for a template or say, I think a --
8 and we had -- had a -- a couple of discussions on the
9 7th and the 11th with -- the Friday and the Monday --
10 I think it might've been the 10th.

11 We'd had discussions -- a lot of -- around
12 the interaction between the termination of
13 probationary employees and the Deferred Resignation
14 Program because the issue that arose was the DRP was
15 still around and it was still open.

16 And so what happens when somebody -- when --
17 if you send out these notices and then everybody just
18 takes a DRP, what happens then?

19 And do you want to make -- when do you make
20 the effective date of the termination? Should you
21 allow -- you know, what happens if -- should people be
22 able to get full appointee status while they're on the

1 DRP? So these are all very kind of complex issues.

2 And so some -- when the agencies would have
3 questions, a lot of times they would come to OPM and
4 ask, you know, "Hey, we're planning to terminate all
5 our probationary employees on -- or terminate the ones
6 on our list on this date. You know, when should we --
7 do you have a form we can use? Or when should we make
8 the effective date?"

9 Q In relationship to the close of the -- you
10 called it the DRP -- the Deferred Resignation Program?

11 A Some of them were freestanding requests
12 for -- for template letters. Some of them were in
13 connection with -- were more -- I mean, what should we
14 do? How should we handle the interaction with the
15 DRP?

16 Q Okay. But in fact, Mr. Peters, you told the
17 agencies they should terminate their probationary
18 employees after the DRP closed; right?

19 MR. FUCHS: Objection. Form.

20 THE WITNESS: No. And in fact, some of
21 the -- like I said, like, Small Business
22 Administration had sent out notices, I believe, before

1 the DRP closed.

2 BY MS. LEONARD:

3 Q And because that was the original date that
4 the DRP was going to close; correct?

5 A No. And you can say that as many times as
6 you want, but that's not true.

7 Q Okay. So the TRO was lifted at 5:30 p.m. on
8 the 12th. Are you aware of that?

9 MR. FUCHS: Objection. Form.

10 THE WITNESS: I'm not aware of the
11 specific time it was lifted.

12 BY MS. LEONARD:

13 Q Okay. Let's mark the next exhibit, which I
14 believe is Exhibit 7.

15 (Exhibit 7 was marked for
16 identification.)

17 Okay. All right. Mr. Peters, you're going
18 to be handed a email, which I'm going to represent to
19 you as an ECF notification from the United States
20 District Court of District of Massachusetts.

21 And it says, "Notice of electronic filing of
22 an order from Judge George O'Toole," which says, "The

1 temporary restraining order previously entered is
2 dissolved."

3 And you see where it says, "The following
4 transaction was entered on February 12th at 5:34 p.m.
5 Eastern Standard Time." Do you see that?

6 A Yes.

7 Q So does this refresh your recollection that
8 the TRO was lifted at 5:30 on February 12th?

9 MR. FUCHS: Objection. Form.

10 THE WITNESS: I did -- I don't know
11 whether I ever had an awareness that the TRO was
12 lifted. I know the TRO was lifted at some point, but
13 I don't recall. I don't know if I was aware that it
14 was at 5:34 p.m. Eastern Standard Time.

15 BY MS. LEONARD:

16 Q Okay. Let's mark the next as Exhibit 8.

17 (Exhibit 8 was marked for
18 identification.)

19 And you are aware, Mr. Peters, that the Fork
20 in the Road program was closed very soon after the TRO
21 was lifted; correct?

22 MR. FUCHS: Objection. Form.

1 THE WITNESS: Yes. I'm aware that
2 they -- they took action to close it, or they
3 announced that it was closed very quickly after.

4 BY MS. LEONARD:

5 Q Okay. So Exhibit 8 is a OPM email at
6 www.opm.gov/fork. And what time does this website say
7 that the Fork program was closed?

8 A The printout you've given me says 7:20, but
9 we continued accepting -- we continued accepting
10 submissions that -- I believe that most of the
11 agencies submitted ones that were submitted up to and
12 including, like, one in the morning.

13 Q Okay. So Mr. Peters on Exhibit 7, Judge
14 O'Toole lifts the TRO at 5:34 p.m. Eastern. You see
15 that; right?

16 A Yes.

17 Q And then the Fork program is closed
18 according to this OPM website at 7:20 p.m. Eastern.
19 You see that?

20 A Yes.

21 Q And then the email in Exhibit 6 that was
22 sent to the agencies with action due the very next

1 day -- why don't you tell me what time that was sent?

2 A According to the timestamp here, it says
3 this was sent at 8:12.

4 Q p.m.?

5 A p.m.

6 Q Right after the close of the Fork program;
7 right?

8 MR. FUCHS: Objection. Form.

9 THE WITNESS: It would've been, like,
10 an -- maybe an hour after we announced it.

11 BY MS. LEONARD:

12 Q And this is the email where OPM was telling
13 agencies to separate their probationary employees by
14 the end of the day, tomorrow, February 13, 2025, using
15 the attached template; right?

16 MR. FUCHS: Objection. Form.

17 THE WITNESS: Yes. And my
18 understanding was that a lot of them had already
19 started that process before February 12th.

20 BY MS. LEONARD:

21 Q Because OPM ordered them to?

22 MR. FUCHS: Objection. Form.

Page 108

1 THE WITNESS: No. We did not give any
2 sort of February 7th deadline to the agencies to
3 terminate people on their lists.

4 MS. LEONARD: Okay. Why don't we take
5 a short break? I think we've been going for some
6 time, maybe. Do you want five minutes?

7 MR. FUCHS: That good for you?

8 THE WITNESS: Yeah.

9 MR. FUCHS: Okay.

10 THE VIDEOGRAPHER: We're going off the
11 record. This is the end of media unit 2. The time is
12 4:18 p.m.

13 (Off the record.)

14 THE VIDEOGRAPHER: We're back on the
15 record. This is the beginning of media unit 3. The
16 time is 4:28 p.m.

17 BY MS. LEONARD:

18 Q Mr. Peters, there was only ever one template
19 termination letter that OPM provided to the federal
20 agencies; correct?

21 MR. FUCHS: Objection. Form.

22 THE WITNESS: Yeah.

1 BY MS. LEONARD:

2 Q And this was not the only template letter
3 that OPM provided to federal agencies for personnel
4 actions during this time; right?

5 MR. FUCHS: Objection. Form.

6 THE WITNESS: I don't know all the --
7 the templates that OPM would've provided, but we --
8 we, you know, often do provide templates.

9 BY MS. LEONARD:

10 Q Do you recall that OPM also provided
11 agencies a template for placing DEIA employees on
12 administrative leave?

13 MR. FUCHS: Objection. Form.

14 THE WITNESS: I think it might have
15 been attached to one of the -- we might have had
16 something like that attached to one of the memos.

17 BY MS. LEONARD:

18 Q And let's look at the template that OPM
19 provided with respect to probationary employees. We
20 can mark this -- I think we're up to 9.

21 (Exhibit 9 was marked for
22 identification.)

1 You've seen this before?

2 A It looks like this is something that has
3 been filed in the -- the lawsuit.

4 Q I will represent to you that this is the
5 template that your counsel filed in response to one of
6 the Judge's information requests. That's why it has
7 the ECF stamp on top.

8 A Yes.

9 Q So you've seen the template that was
10 provided to federal agencies with respect to
11 probationary employees; correct?

12 A I have, yeah.

13 Q And it's the same template that was attached
14 to the February 12th and February 14th emails;
15 correct?

16 A Yes. This was the -- the template.

17 Q And this template does not provide a space
18 or brackets for any agency to fill in the reasons that
19 an individual's performance was deemed unsatisfactory,
20 does it?

21 MR. FUCHS: Objection. Form.

22 THE WITNESS: It -- it doesn't, but I

Page 111

1 think this was provided in Word, so the agencies --
2 and, you know, as -- as in the nature of a template,
3 you know, it could always be -- be adjusted to what
4 the agency wanted.

5 But then, you know -- so it doesn't --
6 it doesn't have -- but I think this was provided as a
7 Word document.

8 BY MS. LEONARD:

9 Q And if you go back to Exhibit 6, which is
10 the Action Due 2/13 Probationary Employee Actions
11 email -- the February 12th email. Do you have that in
12 front of you?

13 A The -- are you talking about the February
14 13th or the -- the February 12th one?

15 Q Yes.

16 A Yes.

17 Q Yes. And you remember the line, "The
18 separation date should either be immediately or as
19 soon as possible"? You see that?

20 A Yes.

21 Q And if you go down a little further, there's
22 a bullet point second to the bottom. Can you read

1 that for me?

2 A "Employees do not need to have received any
3 particular performance rating previously to be
4 separated."

5 Q So OPM was telling agencies to terminate
6 probationary employees immediately, but they don't
7 have to have received any particular performance
8 evaluation in order to be separated. That's what this
9 email says; correct?

10 MR. FUCHS: Objection. Form.

11 THE WITNESS: Well, I think that was
12 provided as additional guidance around a common
13 question. And, you know, with a yearly performance
14 rating cycle, a lot of employees would not have had
15 the opportunity to have had a performance rating at
16 that point.

17 But, I mean, you know, if there was
18 employees who were -- you know, who they wish to
19 separate from for whatever reason, you know, we were
20 just saying that it's not, like, a formal requirement
21 that they have gone through the performance review
22 process, which, you know, I understand is just the way

1 that -- that it works.

2 BY MS. LEONARD:

3 Q And you understand that there would not have
4 been time between the February 12th email and a
5 immediate termination of probationary employees for
6 agencies to have conducted a performance evaluation;
7 right?

8 MR. FUCHS: Objection. Form.

9 THE WITNESS: Well, I think our point
10 was -- was broader, that they were -- that -- that was
11 not required -- that was not, like, a formal
12 prerequisite. It wasn't -- if that -- I think that --
13 that answers your question; right?

14 BY MS. LEONARD:

15 Q Indeed. We'll mark this as the next, which
16 I think is Exhibit 10.

17 (Exhibit 10 was marked for
18 identification.)

19 And Mr. Peters, you're going to be -- oh,
20 sorry. You were handed what's been marked as Exhibit
21 10. The ECF stamp is fuzzy, but this is the way it
22 happened.

1 It was also submitted by your counsel to the
2 Court in the underlying litigation. Do you recognize
3 Exhibit 10, Mr. Peters?

4 A Yes. This is where it was kind of a
5 follow-up email that we sent after the Friday CHCO
6 Council, where we talked in great depth about how we
7 were suggesting that agencies view performance, which
8 kind of ties to, you know, the process of identifying
9 exempt employees and really who is it.

10 You know, we don't -- our guidance was not
11 to fire everybody who was -- happened to be on a
12 probationary period, but it was to kind of engage in
13 a -- a kind of review that looked at both the agency
14 needs and the individual performance, but is kind of
15 encouraging them to look at the two concepts kind of
16 together, like, is the employee's performance
17 advancing the mission?

18 Q And what you told the agencies in this
19 email, actually on the second page, if you look at the
20 top of the second page, is that OPM believes,
21 "Qualifications for continued employment," in the
22 current context means only the highest performing

Page 115

1 probationers in mission critical areas should be
2 retained. That's what OPM told the agencies; right?

3 A Yeah. And I think it -- it's noteworthy
4 that this was phrased as, you know, OPM's belief.
5 This wasn't, you know, agencies are required to have
6 the same view.

7 It was just kind of our -- how we were
8 encouraging agencies to look at performance in the
9 current -- in the current context.

10 Q Sure. And on the first page, if you flip
11 back to that, OPM has also asked that agencies
12 separate probationary employees that you have not
13 identified as mission critical by no later than end of
14 day Monday, February 17th -- sorry -- February 17th.
15 That is accurate.

16 You asked agencies to separate employees,
17 they have not identified as mission critical by no
18 later than the end of the day Monday, February 17th.
19 Is that right?

20 MR. FUCHS: Objection. Form.

21 THE WITNESS: No. I think that's a
22 little bit imprecise. I think what we meant was that

1 you have not identified as ones that you wish to keep,
2 but, you know, I think it was -- it was phrased that
3 way to kind of emphasize how important it is that the
4 agencies look at the kind of broader mission when
5 making those determinations.

6 BY MS. LEONARD:

7 Q And when you say, "Identified the ones you
8 wish to keep through the exemptions process," we
9 previously discussed in your testimony. Is that
10 right?

11 MR. FUCHS: Objection. Form.

12 THE WITNESS: Yeah. That they have not
13 identified through the -- the exemptions process or
14 otherwise. I mean, it could have been -- they could
15 have just, again, chosen not to do anything in
16 response to this.

17 BY MS. LEONARD:

18 Q Can you identify any document in which OPM
19 told agencies in January or February 2025, that they
20 could have, "Chosen not to do anything in response to
21 these directions from OPM," Mr. Peters?

22 MR. FUCHS: Objection. Form.

Page 117

1 THE WITNESS: I don't know if we put it
2 in the -- put anything like that. You know, we
3 weren't -- we were kind of just, like I said -- like,
4 we were just running through -- I think the way that
5 we were structuring it was through an exemptions
6 process.

7 But, you know, I think that really
8 until this lawsuit, the idea that OPM was directing
9 terminations wasn't something that we were kind of
10 thinking about and optimizing for.

11 So it wouldn't have occurred to us to
12 say -- to say that because we only were alerted to
13 that kind of legal theory after this lawsuit was
14 filed.

15 MS. LEONARD: In fact --

16 THE WITNESS: And -- and to be fair,
17 you only came to that legal theory after a -- another
18 lawsuit had been filed, I believe.

19 I don't think that -- that -- I think
20 that -- I recall there being a lawsuit in front of
21 Judge -- Judge Cooper in DC, and I don't know if the
22 OPM directing the terminations theory was as central

1 to that lawsuit as it was in the second lawsuit, which
2 is this lawsuit.

3 And then that's where we really got the
4 OPM termination -- OPM directed determinations theory
5 was in this lawsuit.

6 And then we got another lawsuit in
7 Maryland, which was based on kind of a
8 different -- which I don't even think mentioned the --
9 the OPM directed determinations theory.

10 So it was -- there was a lot of very
11 kind of creative legal thought that went into coming
12 up with this that we at the time did not anticipate.

13 But had we known that this lawsuit was
14 coming, we absolutely would've issued the
15 clarification, you know, from the -- at that time. We
16 just didn't -- didn't see it coming.

17 BY MS. LEONARD:

18 Q Well, somewhere in there, Mr. Peters, is the
19 truth on which these lawsuits are based, and the
20 agencies certainly publicly were stating that OPM
21 ordered them to terminate their probationary
22 employees. You're aware of that; right?

Page 119

1 MR. FUCHS: Objection. Form.

2 THE WITNESS: I only became -- I -- I
3 think that there might be statements that I read in
4 your complaint, or in the opinion, but again, I only
5 became aware of -- and I was not -- had no
6 contemporaneous knowledge of that prior to -- of
7 statements like that, prior to this lawsuit.

8 BY MS. LEONARD:

9 Q So if any CHCO testifies that they told you
10 that you were ordering us to fire probationary
11 employees, and you cannot do that because it's
12 unlawful, you'd say they're lying?

13 MR. FUCHS: Objection. Form.

14 THE WITNESS: I -- I never had a
15 conversation with a CHCO where a CHCO said, "You are
16 ordering us to do something that's unlawful that we
17 don't want to do."

18 You know, "Please put your order in
19 writing, sir." Like, I never had that -- there was
20 never a conversation with a CHCO that was like that.

21 MS. LEONARD: Okay. Let's mark the
22 next -- I think -- 12.

1 THE REPORTER: Eleven.

2 MS. LEONARD: Eleven? Thank you.

3 BY MS. LEONARD:

4 Q So Mr. Peters, you've been handed what's
5 been marked as Exhibit 11.

6 (Exhibit 11 was marked for
7 identification.)

8 And this is a document that was filed in the
9 case before the Judge, and it is a Forest Service
10 Briefing Paper dated February 13, 2025.

11 And the language that I'm going to direct
12 you to is in the background and recommended briefing
13 points questions. So let me know when you're ready.

14 A Yeah. And this is the first time I'm seeing
15 this -- this document.

16 Q Oh, and I've actually handed you my
17 highlighted copy, so I apologize for that.

18 A No. That's helpful.

19 Q That's the language.

20 A Yeah. This is the first time I'm -- I'm
21 seeing this document. I realize that this was filed
22 on -- it looks like this was filed on March 7th.

1 But the -- I mean, just in what you've
2 highlighted here -- I mean, you can see like -- just
3 by comparing what we said on the 12th, that we did not
4 notify Forest Service to terminate all employees who
5 have not completed their probationary or trial period.

6 Q Mr. Peters, this says, "All federal
7 agencies, including the Department of Agriculture,
8 were notified on February 12, 2025, by the Office of
9 Personnel Management, OPM, to terminate all employees
10 who have not completed their probationary trial or
11 trial period." You see that language?

12 A Yeah. And some of this other stuff is not
13 correct either, like OPM has advised that probationary
14 employees are not eligible for the Deferred
15 Resignation Program. We never advised that. Lots of
16 probationary employees took the Deferred Resignation
17 Program.

18 Q Mr. Peters, going back to the language I
19 just read to you, is it your testimony that this
20 statement is not true?

21 MR. FUCHS: Objection. Form.

22 THE WITNESS: Yeah. I mean, the -- but

1 the statement is not true. But you would know that by
2 reading this document, which talks about how -- about
3 the exemptions process in the -- the last bullet, so.
4 BY MS. LEONARD:

5 Q And the sentence -- the first bullet under
6 recommended briefing -- "OPM directed agencies to
7 separate probationary employees starting February 13,
8 2025." Is it your testimony that this statement by
9 the Forest Service is not true?

10 MR. FUCHS: Objection. Form.

11 THE WITNESS: I mean, it's -- it's not
12 only my -- my statement, it's also what -- what we put
13 in the email, which was we -- we never told -- we
14 never told agencies to fire all probationary
15 employees.

16 And so I think what that -- what this
17 shows -- what this indicates is that there was,
18 like -- I think it shows how much kind of static there
19 was and how much, like, a game of telephone this was,
20 'cause somebody would tell -- somebody would tell
21 somebody that, you know, this is what OPM is telling
22 us.

Page 123

1 But actually when you go back to the
2 source document, it's not what we were telling them.
3 And we -- like, any -- nobody would've told Forest
4 Service, like, go terminate all of your
5 probationary -- all employees who have not completed
6 your probationary or trial period.

7 BY MS. LEONARD:

8 Q So the third bullet point down -- "Based on
9 this direction, it is necessary to start providing
10 notices of separation to employees in probationary and
11 trial period positions starting February 13, 2025."
12 Based on this direction. Is it your testimony that
13 was not true?

14 MR. FUCHS: Objection. Form.

15 THE WITNESS: "Based on this direction,
16 it is necessary to start providing notices of
17 separation to employees in probationary and trial
18 period -- period positions starting February 13,
19 2025." That is not -- that is not our -- was not our
20 direction to any agency.

21 BY MS. LEONARD:

22 Q And on February 25, 2025 -- you can set that

1 aside, Mr. Peters. On February 25, 2025, Tracey
2 Therit, who's the CHCO of the DA, testified to
3 Congress as follows: Ranking Member Takano -- "So
4 nobody ordered you to carry out these terminations?
5 You did it on your own?"

6 Ms. Therit -- "There was direction from the
7 Office of Personnel Management." Is it your testimony
8 that Ms. Therit was lying, Mr. Peters?

9 MR. FUCHS: Objection. Form.

10 THE WITNESS: No. Of course not.
11 There -- what -- what -- you know, I -- I mean, I -- I
12 watched that exchange, which -- you know, was where
13 the kind of congressman was screaming at her and
14 yelling at her and was very -- like, very
15 unprofessional.

16 But what she -- I mean, there -- we
17 gave a -- a kind of a steer -- you know, to go ahead
18 and do -- with respect to the ones that you want to
19 terminate, you know, go ahead and do it on this date.

20 But we didn't -- you know, but we
21 didn't give, like, you must do it -- do this. We --
22 we just said -- you know, we just made -- kind of made

1 the request that the ones that they wish to separate
2 from -- that they do it, you know, on a particular
3 date.

4 So there's kind of a -- so, you know,
5 so it was a -- it was kind of what we wanted --
6 expected, as far as the timing goes. But there was
7 never a directive to fire a particular probationary
8 employee.

9 But I -- you know, so I don't -- I
10 don't think it's -- it's right that, you know, she was
11 lying. I think that, you know, what -- what was
12 happening was, you know, a -- a congressman was
13 yelling at her red-faced, you know, losing his temper,
14 and was kind of being abrasive.

15 And, you know -- and she was kind of
16 going back to -- to some of, you know, the -- the
17 emails. But, you know, so I wouldn't say that she was
18 lying, but I do think that the emails and the guidance
19 that we -- or you know what -- whatever the emails
20 that we provided kind of are what they are.

21 BY MS. LEONARD:

22 Q All right. So on Friday, February 14th,

1 there's a Deputy CHCO at the USDA named Crystal
2 Harris, and she wrote to an employee and said, "Last
3 night, agencies were notified by the Office of
4 Personal Management, OPM, that the administration had
5 decided probationary employees are not eligible for
6 the Deferred Resignation Program, and also these
7 employees are to be terminated."

8 Is it your testimony that Ms. Harris was
9 lying to this employee?

10 MR. FUCHS: Objection. Form.

11 THE WITNESS: I -- like I said, I -- I
12 think -- you know, it's a nice kind of rhetorical
13 trick for kind of a cross to say, "Were you lying
14 then, or was she -- were you lying now?"

15 But like -- or was she lying? And I
16 don't -- that's certainly not accurate that
17 probationary employees were not eligible for the
18 Deferred Resignation Program because many of them did
19 take the Deferred Resignation Program and there was no
20 incident with it.

21 I think that our -- our guidance was
22 even that they could finish out their probationary

1 period while -- you know, without further action,
2 while they were on -- I -- I seem to recall some
3 discussions around that.

4 But there was, you know, the email that
5 we sent was -- you know, it's an email. It -- it's
6 a -- however -- like, what it says is that, you know,
7 please partner with your CHCO to action those you wish
8 to separate from.

9 We also had engaged in a robust
10 exemptions process where over the course of several
11 weeks, agencies provided us lists of exemptions that
12 in most cases, they themselves unilaterally determined
13 and some agencies exempted all of their probationary
14 employees.

15 So there was not for -- the idea that
16 there was a firm -- there was a direction or command
17 or a legal -- like, a final agency action where OPM
18 was firing people beyond its four walls I -- is not
19 accurate.

20 BY MS. LEONARD:

21 Q Ms. Harris continued, "Agencies were
22 directed to begin providing termination notices to

Page 128

1 affected employees and directed the use of a specific
2 template and language for the notice beginning
3 immediately upon OPM notification." Are you saying
4 Ms. Harris is not telling the truth?

5 MR. FUCHS: Objection. Form.

6 THE WITNESS: The email that we sent
7 kind of speaks for itself. There is no -- I mean, I
8 think it's important to clarify that, to my knowledge,
9 I don't think there was anything additional to the --
10 to the email.

11 There was no -- like, there was -- we
12 just sent -- we sent the email. We had a meeting
13 where we read the email to chiefs of staff and took
14 questions.

15 And lots of them, you know, just shared
16 feedback on their own processes with terminating
17 probationary employees, which, you know, in some
18 agencies had been bumpy.

19 And then we read from this during the
20 CHCO call on Friday. But that's kind of the extent of
21 what happened. The --

22 //

1 BY MS. LEONARD:

2 Q So on February 18, 2025, at the National
3 Science Foundation, there was a meeting for all
4 probationary employees where CHCO Wonzie Gardner, who
5 I believe you know -- do you know Wonzie?

6 A Yeah. I know Wonzie.

7 Q Okay. So CHCO Wonzie Gardner and Micah
8 Cheatham, the chief management officer, told the NSF
9 employees, "We were directed by OPM to terminate all
10 probationers except for a minimum number of mission
11 critical probationers."

12 "This is not a decision the agency made.
13 This is a direction we received." Are you saying that
14 Mr. Peters was lying?

15 MR. FUCHS: Objection. Form.

16 THE WITNESS: Well, I'm certainly not
17 saying Mr. Peters was lying. I don't think I'm saying
18 as far as --

19 BY MS. LEONARD:

20 Q Sorry. Are you saying that Mr. Cheatham was
21 lying?

22 MR. FUCHS: Same objection.

Page 130

1 THE WITNESS: I -- like, responding to
2 statements from other people that you're reading to
3 me -- you know, I don't know what they -- and I think
4 lying kind of is -- says that they had some sort of
5 intent.

6 I mean, what happened was we sent the
7 emails, we engaged in the exemptions process -- you
8 know, I don't know what the -- what -- I mean, and
9 so -- and they had a meeting and it -- and every
10 agency chose to break it, you know, to the employees.

11 And well, the agencies all did it in a
12 different way, to my knowledge, you know, so if
13 that's -- that's what they said -- you know, if -- if
14 you're telling me that's what they said, you know,
15 that's -- that's what he said.

16 But the documents we have, I think,
17 refer to an exemptions process, and he refers to it,
18 you know, and they -- we had them -- you know, we
19 asked them to look -- to look to the performance in
20 the context of organizational needs.

21 And, you know, if -- so, if that's
22 what -- if that's what he said, I don't want to

1 ascribe any intent or wrongdoing to him, but it's just
2 the -- the guidance or the -- the emails that we sent
3 are just the emails.

4 BY MS. LEONARD:

5 Q So we've got statements from agency
6 officials at the USDA, at the National Science
7 Foundation, at the Department of Defense, at the IRS
8 part of Treasury. And I could keep reading all of
9 them.

10 Is it your testimony that they were all just
11 misinformed or confused and didn't understand the
12 direction that OPM was giving?

13 MR. FUCHS: Objection. Form.

14 THE WITNESS: Is it my direction that
15 they were -- that they were confused? I -- you
16 haven't read to me all of the statements first that
17 you're -- and nor have I -- nor have I read them, nor
18 was I aware of them before this lawsuit.

19 So I -- I'm aware of the ones -- there
20 were some that were sent that didn't refer to
21 OPM's direction that we provided.

22 But, you know, I think that however --

1 whatever they said -- you know, however they were
2 choosing to tell employees what had happened or -- or
3 why they were being separated, or why they were taking
4 the action -- you know, would've reflected what they
5 felt -- what was most comfortable to kind of say
6 for -- for them.

7 I think at any -- like I said, at any
8 time the agencies had free reign to exempt people from
9 any sort of termination, and these were actions that
10 they were taking -- and, you know, we didn't direct
11 any specific terminations.

12 We just asked them -- not invoking any
13 sort of formal power -- just to undertake a focused
14 review of probationers and determine which ones met a
15 certain high standard of performance.

16 BY MS. LEONARD:

17 Q So if managers from the CDC were to say that
18 they went through a very deliberate process to
19 characterize their probationary employees as mission
20 critical and submitted those to OPM to try to save
21 people who worked at the CDC and were told, "No,
22 terminate these employees effective immediately -- the

Page 133

1 entire list," you would say that's not true?

2 MR. FUCHS: Objection. Form.

3 THE WITNESS: I don't think that we --
4 we certainly did not tell people to terminate all
5 probationary employees. So I don't know who the --
6 who would've said that to them.

7 BY MS. LEONARD:

8 Q Were you involved in the conversations with
9 CDC about which employees they could save?

10 MR. FUCHS: Objection. Form.

11 THE WITNESS: No. I was involved in --
12 in no conversations with CDC about which ones they --
13 they could -- when you say save -- I mean, which ones
14 they could retain at the agency.

15 BY MS. LEONARD:

16 Q And what about the National Science
17 Foundation? Were you involved in the conversations in
18 which they were told that their list contained too
19 many people to retain?

20 MR. FUCHS: Objection. Form.

21 THE WITNESS: I'm not aware that any
22 such conversations took place.

1 BY MS. LEONARD:

2 Q Who would've had them at OPM?

3 MR. FUCHS: Objection. Form.

4 BY MS. LEONARD:

5 Q Who would've been discussing the lists and
6 the exemption process with -- let's start with CDC?
7 Who would've had that conversation?

8 MR. FUCHS: Same objection.

9 THE WITNESS: I don't know.

10 BY MS. LEONARD:

11 Q You don't know?

12 A I don't know who would've had that -- that
13 conversation, or if any conversation occurred. I
14 don't know.

15 Q So you don't know whether agencies were
16 actually permitted to make the decision to keep and
17 retain their employees because you don't know who was
18 having that conversation or what the conversation
19 contained; right?

20 MR. FUCHS: Objection. Form.

21 THE WITNESS: I mean, I had some
22 understanding of the process, you know, that was

1 occurring with respect to determining which employees
2 were mission critical or not.

3 But I don't -- wasn't aware of -- I
4 don't know every conversation that takes place at --
5 at OPM, but I'm kind of testifying based on my own
6 personal knowledge of -- of the conversations that
7 were -- that I -- I'm aware of.

8 BY MS. LEONARD:

9 Q Okay. So, and it's your testimony that you
10 were not personally involved in any of the
11 conversations with the agencies through this exemption
12 process; correct?

13 MR. FUCHS: Objection. Form.

14 THE WITNESS: I told you I was involved
15 in -- in some where -- you know, where, like, the --
16 with respect to the EEOC where they said, "We'd like
17 to keep all of our probationary employees," and it was
18 fine, you know.

19 BY MS. LEONARD:

20 Q You said, "Fine"?

21 A Yeah. And DOJ.

22 Q You said, "Fine," to DOJ too?

1 A I don't think I said, "Fine." I think DOJ
2 just said, "We're not doing this." And I don't even
3 know that there was any reach back on or any response
4 to that.

5 And I'm aware of -- with respect to the
6 nuclear regulatory safety -- something along those
7 lines -- I'm aware that they received a 100 percent
8 exemption.

9 Q After they initially followed
10 OPM's direction to terminate those employees, they
11 reached out, got an exemption, and were allowed to put
12 them back; correct?

13 MR. FUCHS: Objection. Form.

14 THE WITNESS: No. My understanding
15 was -- was not that. I think that they just -- they
16 just asked.

17 BY MS. LEONARD:

18 Q Same for the food safety researchers at FDA.
19 They had to fire everyone, but then they were allowed
20 to reach out to OPM and were given the authority to
21 put them back; right?

22 MR. FUCHS: Objection. Form.

Page 137

1 THE WITNESS: No. The idea that people
2 had to fire people was -- is not accurate at all, so.

3 BY MS. LEONARD:

4 Q Is there anyone else at any agency that you
5 can point me to who actually believes that,
6 Mr. Peters?

7 MR. FUCHS: Objection. Form.

8 THE WITNESS: Who actually believes
9 that they didn't have to fire people? I mean, the
10 ones that didn't fire people certainly know that they
11 didn't have to fire people.

12 BY MS. LEONARD:

13 Q Can you point me to any written document --
14 any communication where agencies are agreeing with you
15 that they didn't have to fire people? Anything in
16 writing, Mr. Peters?

17 MR. FUCHS: Objection. Form.

18 THE WITNESS: Yeah. I mean, I wasn't
19 engaged in this litigation -- like, I was -- I wasn't,
20 like, litigating this issue back in February when
21 all -- all of this was going on.

22 I just, you know -- we weren't -- I

1 wasn't, like, looking at the -- this complaint and
2 thinking, oh, no, we have to make sure that this
3 theory doesn't get -- become the -- like, we were --
4 I -- it didn't even occur to me that -- that you guys
5 would file a lawsuit like this, or that people
6 would -- that this would become some sort of legal
7 theory that we would get sued on.

8 If I -- if I had, we would've -- I
9 mean, obviously we would've done things -- I mean, as
10 soon as we got the TRO from the judge, we immediately
11 sought to clarify the guidance.

12 But it's not our intent to do anything
13 that was unlawful or that was reached beyond our
14 powers. We were very -- you know, we always try to be
15 very careful to obey all the laws, and not only to
16 obey them, but also to ensure that, you know, agencies
17 are -- are following them.

18 I mean, a lot of these processes were
19 meant for vetting of -- of legal questions. And in
20 fact, we had a call with all of the general counsels
21 around this time of all the agencies to kind of alert
22 ourselves to any -- be able to discuss legal issues

1 around the DRP, not around probationary periods.

2 I think we might've had a call on
3 the -- on the 14th with all general -- general
4 counsel. So we were not -- the idea that -- that we
5 were reaching beyond our powers or that we were
6 directing -- doing firings outside of our four walls
7 was not on our radar screen.

8 And to be fair, I don't think initially
9 it was on your radar screen, 'cause there -- the
10 initial lawsuit, I don't think, mentioned this theory.

11 I may be wrong, but I -- my
12 recollection is that the lawsuit in front of Judge
13 Cooper didn't have the OPM beyond the four walls
14 theory. I think that that was just -- and it's -- you
15 know, so we weren't thinking about the lawsuit or this
16 legal theory at the time.

17 BY MS. LEONARD:

18 Q You were just asking agencies to action
19 their probationary employees by no later than February
20 13th in the February 12th email, and then again in the
21 February 14th email by no later than February 27th;
22 correct?

Page 140

1 MR. FUCHS: Objection. Form.

2 THE WITNESS: What we were asking was
3 for having gone through a -- you know, two, three
4 weeks of an exemption process and having given
5 guidance -- you know, having told agencies what -- how
6 we viewed performance in this context, we were, you
7 know, giving them an action date.

8 BY MS. LEONARD:

9 Q And did you just testify that you were
10 involved in the communications with the agencies that
11 OPM issued after the TRO was issued in this case?

12 A I was involved in what?

13 Q Sorry. The communications that went out to
14 the agencies that were subject to the TRO in this
15 case? I believe you mentioned that in that prior
16 testimony.

17 A No. No. I was not involved in those
18 communications. What I said was, as soon as the -- so
19 as soon -- what we did was we clarified -- immediately
20 clarified this guidance from January 20th. I -- I am
21 aware of that.

22 I believe that -- that DOJ reached out to

1 all of those agencies not speaking on -- I don't know
2 what exactly what they said, but my understanding is
3 that the employees were all reinstated, like,
4 immediately after the TRO. But that --

5 Q I don't want you to reveal anything that you
6 may have learned via conversations with counsel. So
7 if --

8 MR. FUCHS: Yeah.

9 BY MS. LEONARD:

10 Q If there is something there in that last
11 answer, you are free to tell us, and we'll talk about
12 that after the fact.

13 But I'm going to mark this as the next, and
14 then we can just ask some clarifying questions. The
15 next being --

16 MS. LEONARD: This is not my
17 superpower. I lose track.

18 MS. THOLIN: Exhibit 12.

19 MS. LEONARD: Twelve. Thank you.

20 (Exhibit 12 was marked for
21 identification.)

22 //

1 BY MS. LEONARD:

2 Q Okay. Take a look at this communication
3 from Amanda Scales on Friday, February 28, 2025. It's
4 got some redacted names.

5 And my question simply is this, Mr. Peters.
6 Are you one of the names that was redacted here? Are
7 you one of the recipients of this email or copied?

8 A Oh, I don't know. I -- I -- honestly, I
9 don't know. Actually, no. Oh, no. I -- I don't --
10 so I think that my understanding is that this was --
11 it -- that this is just to the people. I think what
12 they did is they just redacted the email addresses.

13 Q Okay. But if you are not one of the
14 redacted names, then?

15 A But I don't think that there are any
16 redacted names. I just think that they redacted the
17 email addresses.

18 Q It's a little hard to tell. But the
19 question is simply, do you -- were you copied on the
20 communications that went out after the TRO to the
21 various agencies?

22 MR. FUCHS: Objection. Form.

1 THE WITNESS: I don't remember. I -- I
2 really don't.

3 BY MS. LEONARD:

4 Q Okay. All right. We can mark this as the
5 next -- this is the March 4th revision, and this is
6 going to be Exhibit 13.

7 (Exhibit 13 was marked for
8 identification.)

9 So Mr. Peters, you've been referring to the
10 March 5th revision. Actually, this says revised March
11 4th, so I'm not sure whether -- do you know whether it
12 was revised on the 5th or the 4th?

13 A No. This has the language. I think it
14 might have been -- maybe it was the 4th. I -- I might
15 have just been saying the 5th.

16 Q Okay. So the language you're referring to
17 is at the top of page 2. Is that where -- "Please
18 note by this memorandum, OPM is not directing agencies
19 to take any specific performance-based actions."

20 A Yeah. That's right.

21 Q So on March -- we'll just say March 4th.
22 March 4th issued a revision to the January 20th

1 memorandum that had instructed the federal agencies to
2 collect and submit lists of probationary workers.
3 That's what this revision is; right?

4 A Yeah. And it was in response -- I think it
5 was in response to the TRO.

6 Q So I don't want you to reveal anything you
7 were aware of because of attorney-client
8 communications. So I'm just going to make that clear.
9 All right?

10 By this time, March 4th, it had been nearly
11 a month and a half after the original memo; right?

12 A Yeah. I mean, it had -- it had been, you
13 know, 50 -- or maybe -- I don't know -- 40, 50 days.

14 Q And by that time, agencies had been
15 collecting and submitting lists of their probationary
16 employees to OPM for weeks; right?

17 A Well, like I said, we weren't -- we weren't
18 aware of this legal theory until the lawsuit came. So
19 that's the reason for the -- for any delay, was just
20 that it wasn't on -- it wasn't on our radar screen
21 that you have to watch out for this in terms of -- or
22 that -- wow.

1 That -- that's not -- you can't do that.
2 Like, the -- the legal theory was only -- I think
3 the -- this only came on our radar screen after the
4 complaint was filed.

5 Q So my question was a factual one, slightly
6 different. By the time of this revision, the agencies
7 had been collecting and submitting lists of their
8 probationary workers to OPM for weeks; correct?

9 A They -- I believe so.

10 Q And by this time, thousands of probationary
11 employees had already been terminated; correct?

12 MR. FUCHS: Objection. Form.

13 THE WITNESS: My -- it's, my
14 understanding is that there were -- you know, whatever
15 the numbers were.

16 BY MS. LEONARD:

17 Q So after all of those probationary employees
18 had been fired, OPM added two sentences to this
19 January memorandum telling agencies that they should
20 make their own decisions; correct?

21 MR. FUCHS: Objection. Form.

22 THE WITNESS: Well, but the reason we

1 were -- we were adding that was not because we
2 were -- not because it had just occurred to us after
3 50 days.

4 It was in response -- because we were
5 not aware of this legal theory or this kind of factual
6 theory until -- until, you know, the lawsuit was
7 filed.

8 And as soon as we got the TRO we wanted
9 to, you know -- and after the Judge ordered it, we
10 immediately amended and tried to make clear that --
11 that we're not directing agencies to take any -- do
12 any specific performance-based actions regarding
13 probationary employees, which was not -- I -- you
14 know, the intention was never to have them do that.

15 BY MS. LEONARD:

16 Q Notwithstanding the template that said,
17 "Fire everyone because of performance," Mr. Peters?

18 MR. FUCHS: Objection. Form.

19 THE WITNESS: The template was -- so we
20 provided a template, but we never said, "Fire everyone
21 because of performance." We never said, "Fire every
22 probationary employee."

1 BY MS. LEONARD:

2 Q You just told the agencies to tell the
3 employees that; right?

4 MR. FUCHS: Objection. Form.

5 THE WITNESS: We gave the -- so we
6 attached a form termination letter because the
7 agencies had been asking, "Do you have a form?"

8 BY MS. LEONARD:

9 Q So this language that was added -- it does
10 not tell federal agencies that OPM no longer considers
11 performance to mean only those who are mission
12 critical, does it?

13 MR. FUCHS: Objection. Form.

14 THE WITNESS: Does it say it? It -- it
15 doesn't say that, but I -- I don't know -- I don't
16 know that we ever said that OPM considers performance
17 to be only mission critical.

18 What I -- I think we were -- you know,
19 to the extent -- yeah. I -- I don't think we -- we
20 said that. I also -- I think this was also edited so
21 that it -- it didn't say managed staffing.

22 I think it said, "Ensure that a

1 probationer's conduct and performance have established
2 that the individual will be an asset to the
3 government." So I think there are actually two
4 revisions to this.

5 BY MS. LEONARD:

6 Q There is no document prior to this March 4th
7 revision to the January 20th memo from OPM to any
8 agency that says agencies can make the decision
9 whether to fire probationary employees themselves;
10 correct?

11 MR. FUCHS: Objection. Form.

12 THE WITNESS: There was never -- there
13 was -- sorry. Say that again?

14 BY MS. LEONARD:

15 Q There's no document prior to the March 4,
16 2025, revision to this January 20th memo that says
17 agencies can make this decision themselves; correct?

18 MR. FUCHS: Same objection.

19 THE WITNESS: That says agencies can
20 make this decision themselves? I think that's what we
21 meant by agencies have ultimate decision-making
22 authority over and responsibility for such personnel

1 actions.

2 BY MS. LEONARD:

3 Q In the revision on March 4th; right?

4 A That's what we said in the revision, but I
5 think that that's what we always meant.

6 Q But there's no document that you can point
7 me to where you actually tell -- OPM tells agencies,
8 agencies can make the decision with respect to
9 probationary employees themselves; correct?

10 MR. FUCHS: Objection. Form.

11 THE WITNESS: Well, this -- this was
12 sent to all -- we recirculated the documents, so we
13 recirculated this to all heads and acting heads of
14 departments.

15 We recirculated this to the chief human
16 capital officers, to the CHCOs, to human resource
17 directors, and we put in the transmittal -- we -- we
18 put that language that we are clarifying that agencies
19 have ultimate decision-making authority over and
20 responsibility for performance-based actions regarding
21 probationary employees.

22 //

1 BY MS. LEONARD:

2 Q So, well, I'll ask my question again,
3 Mr. Peters. Prior to this March 4th revision, there
4 is no document in which OPM tells the agencies you can
5 make this decision yourselves; correct?

6 A Like I said --

7 MR. FUCHS: Objection. Form.

8 THE WITNESS: -- this -- this was not
9 on our radar screen -- this legal theory was not on
10 our radar screen until the lawsuit was filed -- this
11 lawsuit was filed.

12 So it didn't -- it didn't occur to us
13 to -- to revise this because it wasn't something we
14 were thinking -- oh no, we're going to be accused of,
15 you know, doing something illegal.

16 So we -- if -- if we -- if we had
17 known, we would have put in that language sooner. But
18 your -- the lawsuit that was filed here was the first
19 time that the beyond the four walls theory that I was
20 aware of -- of it -- or that anybody at OPM was aware
21 of it.

22 //

1 BY MS. LEONARD:

2 Q So the answer to my question of whether
3 there's any document before the March 4, 2025,
4 revision that tells agencies they can make the
5 decisions with respect to probationary employees
6 themselves is no; correct?

7 MR. FUCHS: Objection. Form.

8 THE WITNESS: It's -- I don't know that
9 it's no. I haven't reviewed every -- every document,
10 but I -- I don't know what you're -- I mean, if
11 there's something that says it -- I'm not aware of
12 anything that says it in these words, but like I said,
13 I don't think it's something that we were thinking
14 about.

15 BY MS. LEONARD:

16 Q Are you aware -- there's no document that
17 says it in any other words, either? You can't point
18 me to a document that tells agencies, "You can make
19 this decision yourselves"; correct?

20 MR. FUCHS: Objection. Form.

21 THE WITNESS: Well, you -- you have --
22 I mean, you haven't seen all the documents. Like,

1 there's -- there's documents -- like, I don't --
2 I'm -- I -- I can't think of something off the top of
3 my head that says the -- says -- it says something so
4 precise, but I -- I think that the reason was -- is --
5 'cause just we weren't -- we weren't thinking about it
6 because the -- we only -- this theory only kind of
7 came to our -- on our radar screen because the lawsuit
8 was filed.

9 BY MS. LEONARD:

10 Q Are you familiar, Mr. Peters, with a
11 presidential memoranda that was issued on March 20th
12 for the Director of the Office of Personnel Management
13 called Strengthening the Suitability and Fitness of
14 the Federal Workforce?

15 MR. FUCHS: Objection. Form.

16 THE WITNESS: Yes. I'm -- I'm aware of
17 it.

18 BY MS. LEONARD:

19 Q Okay. Let's mark this as the next. And
20 I'll represent -- I printed this from the White House
21 website myself, so this should be 14.

22 //

1 (Exhibit 14 was marked for
2 identification.)

3 Mr. Peters, this document in section 1
4 describes -- it says, "Delegation of authority to make
5 suitability determinations." You see that?

6 A Yes.

7 Q And it says, "The director of OPM has
8 delegated the authority to make final suitability
9 determinations and take suitability actions regarding
10 employees in the executive branch based on
11 post-appointment conduct consistent with applicable
12 law." Do you see that?

13 A Yes.

14 Q Prior to March 20, 25, the president had not
15 attempted to delegate to the director of OPM, any
16 authority to make final suitability determinations or
17 take suitability actions regarding post-appointment
18 conduct; correct?

19 MR. FUCHS: Objection. Form.

20 THE WITNESS: That's false.

21 BY MS. LEONARD:

22 Q You can point me to a delegation by the

1 president to the director of OPM prior to March 20,
2 2025, in which the president makes that delegation?

3 A First off, this is completely outside the
4 bounds of -- of this case, but second off, there have
5 been numerous executive orders where there were --
6 and, you know -- where -- that have discussed
7 suitability actions in continuous vetting and -- and
8 all of that after -- you know -- being, you know,
9 conducted by the OPM director.

10 Q So you believe there are prior executive
11 orders in which the president attempted to delegate
12 the authority to the OPM director that is contained in
13 this document?

14 MR. FUCHS: Objection. Form.

15 THE WITNESS: I am telling -- I think
16 that this -- this is completely irrelevant to anything
17 related to the case that is we're having right now.
18 I -- I -- but there -- there -- OPM has taken actions
19 based on post-appointment conduct for decades.

20 BY MS. LEONARD:

21 Q And you believe that there are documents in
22 which the president has delegated that to the director

1 of OPM -- the suit -- the ability to make suitability
2 determinations for post-appointment conduct?

3 MR. FUCHS: Objection. Form.

4 THE WITNESS: Well, yes. In multiple
5 executive orders over the course of multiple
6 administrations. Yes.

7 BY MS. LEONARD:

8 Q Mr. Peters, was there any point in time
9 prior to today that you have met with Elon Musk
10 regarding terminating probationary employees?

11 A No.

12 Q Is there any point in time prior to today
13 that you have met with the president regarding
14 terminating probationary employees?

15 MR. FUCHS: I'm going to --

16 MS. LEONARD: That one I think the
17 answer might overrun the --

18 MR. FUCHS: Yeah. Okay.

19 THE WITNESS: That's, like, executive
20 privilege.

21 MR. FUCHS: Yeah. It's okay --

22 MS. LEONARD: The answer is --

Page 156

1 THE WITNESS: It was, like, when the --
2 when they say, do you want to -- you know, the FBI
3 would like to speak with you.

4 MS. LEONARD: So --

5 MR. FUCHS: The answer no is fine.

6 THE WITNESS: Okay.

7 BY MS. LEONARD:

8 Q So, Mr. Peters, I understand that you're
9 being considered for a nomination to the Federal Labor
10 Relations Authority. Is that true?

11 A No.

12 MR. FUCHS: Objection. Form.

13 BY MS. LEONARD:

14 Q That's not your reward?

15 A No. No.

16 MS. LEONARD: Okay. With that, we will
17 take a short break and we will see if there's anything
18 more. I think we just have a few more minutes.

19 THE VIDEOGRAPHER: We're going off the
20 record. This is the end of media unit 3. The time is
21 5:17 p.m.

22 (Off the record.)

Page 157

1 THE VIDEOGRAPHER: We're back on the
2 record. This is the beginning of media unit 4. The
3 time is 5:31 p.m.

4 BY MS. LEONARD:

5 Q We are going to mark the next, which I think
6 is 15.

7 (Exhibit 15 was marked for
8 identification.)

9 And this is the Declaration of Charles
10 Ezell, acting director of OPM, that was submitted and
11 then withdrawn in this case. I will direct your
12 attention to paragraph 1. Mr. Peters, do you see
13 that?

14 A Yes.

15 Q And Mr. Ezell says here, "This declaration
16 is based on my personal knowledge and information
17 provided to me in my official capacity by others."
18 Are you among the others who provided information to
19 Mr. Ezell for purposes of creating this declaration?

20 MR. FUCHS: Objection. Form.

21 THE WITNESS: Yes.

22 //

1 BY MS. LEONARD:

2 Q And what information in this declaration was
3 provided by you?

4 MR. FUCHS: To the extent that anything
5 touches on attorney-client conversations, I instruct
6 the witness not to answer with that caveat.

7 THE WITNESS: I think I provided all --
8 all of the information for this.

9 BY MS. LEONARD:

10 Q And when did you do that?

11 A Before it was filed.

12 Q Okay. So if we look at the -- it's dated
13 February 26th.

14 A Yes.

15 Q Do you have any recollection of when, before
16 February 26th, you provided the information to
17 Mr. Ezell?

18 A It -- it would've been for -- for all the
19 things in this declaration -- it might've been at --
20 at different times, but I -- you know, like, I think
21 he -- obviously he knew that -- he knew about the
22 guidance.

1 I mean, I didn't give that information to
2 him. The CHCO meeting -- I think he might've been
3 there for part of it, although I don't remember the --
4 he would've been aware of the probationary FAQs.

5 He would've been aware that OPM did not
6 direct agencies to terminate particular employees. He
7 would've -- I think he would've been aware the --
8 well --

9 Q How would Mr. Ezell have been aware that OPM
10 did not direct agencies to terminate probationary
11 employees, Mr. Peters?

12 MR. FUCHS: Objection. Form.

13 THE WITNESS: Well, I think from having
14 reviewed the communications that we provided.

15 BY MS. LEONARD:

16 Q Any other basis for saying that.

17 A He certainly knew that -- about OPM
18 terminating its own probationary employees. But I
19 don't want to speculate. I don't know -- I don't know
20 when he -- when he learned of -- of this stuff and I
21 don't know from who.

22 Q Okay. I just want to make sure I understand

Page 160

1 and exhaust the basis that when you said he would've
2 known that OPM did not direct agencies -- that is
3 based on the communications that you believe he
4 reviewed and his termination of the OPM employees?

5 MR. FUCHS: Objection. Form.

6 BY MS. LEONARD:

7 Q Is that right?

8 A I -- I think we're now so outside of my
9 personal knowledge that I don't think it would be
10 useful for me to answer that.

11 Q Okay. So there's no other basis for the
12 statement that he would've known that, that you
13 can -- that you feel comfortable telling --

14 A You have to -- you really have to ask him.
15 I don't know.

16 Q Okay. All right. Let's mark this one as
17 Exhibit 16.

18 (Exhibit 16 was marked for
19 identification.)

20 Mr. Peters, you've been handed Exhibit 16,
21 which is your own declaration that was submitted to
22 the Court in support of Defendant's ex parte motion to

Page 161

1 vacate the March 13, 2025, evidentiary hearing. I
2 take it you are familiar with this document?

3 A Yeah. And I -- I would like to clarify that
4 I was present at these. I know that the Judge said I
5 might not have been.

6 I was present at the February 7th, the
7 February 10th, and the February 13th, and the February
8 14th meetings that are described here. And I know --
9 I know what was said at -- at those meetings.

10 Q And, well, let's start with -- the signature
11 here is an electronic signature. Did you authorize
12 your signature to be applied to this document?

13 A I did.

14 Q Okay. And did you do that on March 10th?

15 A May -- might've been March 9th. I don't
16 know.

17 Q Okay. And the document does not say that
18 you were providing this information as on the basis of
19 personal knowledge, which I believe is what led to the
20 Judge's comments.

21 Are you representing that the information in
22 this declaration is, in fact, based on personal

1 knowledge?

2 A Yes.

3 Q And that includes the telephone calls with
4 CHCOs and chief of staff that are discussed here?

5 A Yes.

6 Q Okay. And the February 7, 2025, call was
7 with chiefs of staff. Is that correct?

8 A Chiefs of staff. Yes.

9 Q Was it also with -- actually, if you could
10 look at the disclosure exhibit, which is the February
11 13th list?

12 A Yes.

13 Q And do you have the February 12th email?
14 And apologies for not knowing the exhibit number off
15 the top of my head, but it should be in the stack
16 that's in front of you -- the February 12th email.

17 It should be in there somewhere. I have
18 another copy of it. It's Exhibit 6, if that helps. I
19 can also -- if you don't -- I can --

20 A The February 12th email?

21 Q Yes.

22 A I have it.

1 Q Okay. So there's a line here at the top
2 that says, "BCC: COS and Key Partners, DOGE leads."
3 Do you see that?

4 A Yes.

5 Q Okay. So COS refers to chiefs of staff;
6 correct?

7 A Yes.

8 Q Key partners -- does that refer to other
9 political appointees at federal agencies?

10 MR. FUCHS: Object to form.

11 THE WITNESS: I -- I think it refer --
12 it probably refers to the same people on the
13 disclosure, but I don't know who this was specifically
14 sent to.

15 BY MS. LEONARD:

16 Q That's because it was sent as a BCC?

17 A Yeah. That's right. I don't.

18 Q Okay. And DOGE leads -- does that refer to
19 individuals associated with DOGE who are embedded at
20 federal agencies or something else?

21 MR. FUCHS: Objection. Form.

22 THE WITNESS: I don't know who it

1 refers to.

2 BY MS. LEONARD:

3 Q Okay. On that list from February 13th, do
4 you recognize the names of individuals who are
5 affiliated with DOGE?

6 MR. FUCHS: Objection. Form.

7 THE WITNESS: Affiliated with DOGE?
8 What do you mean?

9 BY MS. LEONARD:

10 Q So the February 12th email is listed as
11 being sent to DOGE leads, and I'm wondering whether
12 anyone on the February 13th list you recognize as
13 being affiliated with DOGE?

14 MR. FUCHS: Objection. Form.

15 THE WITNESS: Affiliated with
16 DOGE -- affiliated. And what do you -- what does
17 affiliated mean?

18 BY MS. LEONARD:

19 Q Do they work for DOGE?

20 A No. In fact, all of these people work
21 for -- I think they all work for the agencies.

22 Q Are they part of a DOGE team at the

1 agencies?

2 MR. FUCHS: Objection. Form.

3 THE WITNESS: I don't know.

4 BY MS. LEONARD:

5 Q Are you part of a DOGE team at OPM?

6 A No.

7 MR. FUCHS: Objection. Form.

8 BY MS. LEONARD:

9 Q Do you have a DOGE email address?

10 A No.

11 MR. FUCHS: Objection. Form.

12 BY MS. LEONARD:

13 Q Have you been affiliated in any way with
14 DOGE since January 20th?

15 MR. FUCHS: Objection. Form.

16 THE WITNESS: Affiliated in any way
17 with DOGE? I -- I don't know what that means.

18 BY MS. LEONARD:

19 Q So there are -- you're aware that there are
20 individuals working at federal agencies who have been
21 designated as affiliates of DOGE at those agencies
22 pursuant to the president's executive orders?

Page 166

1 A I think just from reading the executive
2 order.

3 Q Are you affiliated in any way with DOGE,
4 Mr. Peters?

5 MR. FUCHS: Objection. Form.

6 THE WITNESS: No.

7 BY MS. LEONARD:

8 Q Do you perform any work for DOGE?

9 MR. FUCHS: Same objection.

10 THE WITNESS: No. I mean, I -- I
11 coordinate sometimes with their lawyers, but I don't
12 personally -- I'm not on the -- the DOGE team or
13 anything like that.

14 BY MS. LEONARD:

15 Q Have you discussed the termination of
16 probationary employees with anyone from DOGE since
17 January 20th?

18 MR. FUCHS: Same objection.

19 THE WITNESS: No.

20 BY MS. LEONARD:

21 Q Okay. Going back to your declaration, the
22 February 7th call that you refer to here -- was

1 Charles Ezell on that call?

2 A No.

3 Q At any time did he come in and out of the
4 conference room while it was on Zoom?

5 A No.

6 Q The February 10th call that's referred to
7 here -- was Charles Ezell on that call?

8 A No.

9 Q The call that you don't mention here, that
10 happened on February 12th?

11 A I did -- there was no call on February 12th.

12 Q There was no call on February 12th?

13 A There was a CHCO call on February 12th, but
14 there was -- wasn't a chief of Staff call.

15 Q Okay. The CHCO call on February 12th. Was
16 Charles Ezell on that call?

17 A I don't know. He might have been. I think
18 we -- I -- I don't know is the answer.

19 Q And the February 13th call with the CHCOs
20 that you refer to -- sorry. The February 13th call
21 with the chiefs of staff -- Charles Ezell was not on
22 that call. Is that right?

1 A To the best of my recollection, no.

2 Q And the February 14th call with CHCOs -- was
3 Mr. Ezell on that call?

4 A He might -- might've been. I don't -- he
5 might've been at the beginning. I don't know. He
6 sometime -- he was often on -- on the -- the CHCO
7 calls.

8 Q Okay. So the CHCO call -- let's start with
9 the CHCO call on February 12th. Was Mr. Ezell on that
10 call?

11 A I don't know.

12 Q And was Mr. Ezell on the CHCO call on
13 February 13th?

14 A I don't know. I don't know whether he was
15 on any particular CHCO call.

16 Q And you are the person who read the script
17 to the chief of staff --

18 A Yes.

19 Q -- that is referred to in paragraph 5. Is
20 that correct?

21 A Yes.

22 Q And that script was the same as the email

1 from February 12th that we've been looking at here
2 today; correct?

3 A Yes.

4 Q And you also read a script on the CHCO calls
5 with respect to the terminations of probationary
6 employees; correct?

7 A Yes.

8 Q And what was contained in that script that
9 you read to the CHCOs?

10 A It would've been the same as the -- the
11 email that we sent as the notes of the call.

12 Q On February 14th?

13 A Yeah.

14 Q So the script that you read to the CHCOs on
15 the CHCO calls was the same as the February 14th
16 email; correct?

17 A Yes.

18 Q Were there any other scripts that you read
19 regarding probationary employees at any time to either
20 the CHCOs or the chiefs of staff, other than the ones
21 that reflect the February 12th and February 14th
22 emails?

Page 170

1 MR. FUCHS: Objection. Form.

2 THE WITNESS: I think I might have ran
3 through the -- the FAQs on probationary employees at
4 one of the calls. I would've just, like, read -- read
5 through it.

6 BY MS. LEONARD:

7 Q Mr. Peters, why were you reading a script?

8 MR. FUCHS: Objection. Form.

9 THE WITNESS: I think it was just so
10 that it could be vetted and approved by appropriate
11 agency leadership.

12 BY MS. LEONARD:

13 Q And who vetted and approved the script that
14 you read to the chiefs of staff?

15 A I think it would've been -- I think Chuck
16 would've.

17 Q And who vetted and approved the script that
18 you read to the CHCOs?

19 A I think it would've been approved by Chuck.

20 Q You think, or you know?

21 A I think. I don't -- don't recall
22 specifically.

Page 171

1 MS. LEONARD: Okay. I think that is
2 all we have.

3 THE WITNESS: Thank you.

4 MR. FUCHS: Yeah. Nothing further from
5 us.

6 MS. LEONARD: Okay. So no redirect?

7 MR. FUCHS: Yeah. No redirect. No
8 cross.

9 THE VIDEOGRAPHER: Please stand by.
10 We're off the record at 5:45 p.m., and this concludes
11 today's testimony given by Noah Peters. The total
12 number of media units used was four, and they will be
13 retained by Veritext.

14 (Signature reserved.)

15 (Whereupon, at 5:45 p.m., the
16 proceeding was concluded.)

17

18

19

20

21

22

CERTIFICATE OF DEPOSITION OFFICER

I, SAMUEL PACHON, the officer before whom
the foregoing proceedings were taken, do hereby
certify that any witness(es) in the foregoing
proceedings, prior to testifying, were duly sworn;
that the proceedings were recorded by me and
thereafter reduced to typewriting by a qualified
transcriptionist; that said digital audio recording of
said proceedings are a true and accurate record to the
best of my knowledge, skills, and ability; that I am
neither counsel for, related to, nor employed by any
of the parties to the action in which this was taken;
and, further, that I am not a relative or employee of
any counsel or attorney employed by the parties
hereto, nor financially or otherwise interested in the
outcome of this action.



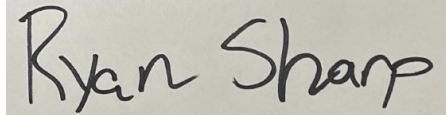
SAMUEL PACHON

Notary Public in and for the
District of Columbia

☒ Review of the transcript was requested.

CERTIFICATE OF TRANSCRIBER

I, RYAN SHARP, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

A handwritten signature in black ink that reads "Ryan Sharp". The signature is written in a cursive, slightly slanted style. It is positioned on a light gray rectangular background that has a thin black border.

RYAN SHARP

22

1 Yuri Fuchs, Esquire

2 yuri.s.fuchs@usdoj.gov

3 April 1, 2025

4 RE: American Federation Of Government Employees Et Al v. United
5 States Offices Of Personnel Management Et Al

6 3/26/2025, Noah Peters (#7269168)

7 The above-referenced transcript is available for
8 review.

9 Within the applicable timeframe, the witness should
10 read the testimony to verify its accuracy. If there are
11 any changes, the witness should note those with the
12 reason, on the attached Errata Sheet.

13 The witness should sign the Acknowledgment of
14 Deponent and Errata and return to the deposing attorney.
15 Copies should be sent to all counsel, and to Veritext at
16 cs-midatlantic@veritext.com

17 Return completed errata within 30 days from
18 receipt of testimony.

19 If the witness fails to do so within the time
20 allotted, the transcript may be used as if signed.

21

21

22 Yours,

23 Veritext Legal Solutions

24

Page 175

1 American Federation Of Government Employees Et Al v. United States
Offices Of Personnel Management Et Al

2 Noah Peters (#7269168)

3 E R R A T A S H E E T

4 PAGE_____ LINE_____ CHANGE_____

5 _____

6 REASON_____

7 PAGE_____ LINE_____ CHANGE_____

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23 3 _____

24 4 Noah Peters Date

25 5 _____

1 1 American Federation Of Government Employees Et Al v. United States
Offices Of Personnel Management Et Al

2 2 Noah Peters (#7269168)

3 3 ACKNOWLEDGEMENT OF DEPONENT

4 4 I, Noah Peters, do hereby declare that I

5 5 have read the foregoing transcript, I have made any

6 6 corrections, additions, or changes I deemed necessary as

7 7 noted above to be appended hereto, and that the same is

8 8 a true, correct and complete transcript of the testimony

9 9 given by me.

10 0

11 1 _____

12 2 Noah Peters Date

13 3 *If notary is required

14 4 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 5 _____ DAY OF _____, 20____.

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17 7

18 8 _____

19 9 NOTARY PUBLIC

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[& - 2025]

Page 1

&	11th 102:9	141 6:20	62:13 108:11
& 2:5 8:19 16:9	12 6:20 119:22	143 6:21	143:17 174:2
0	121:8 141:18	14th 64:20 77:7	175:2,12,22
0 175:10,20	141:20 174:13	110:14 125:22	176:2,12,22
176:10,20	120 6:19	139:3,21 161:8	2/12/25 6:12,14
01780 1:12	12th 75:6,7	168:2 169:12	2/13 82:19 83:7
8:17	81:22 82:1,6	169:15,21	97:17 111:10
1	88:18 97:5	15 7:3 66:1	2/13/2025
	99:17,20	157:6,7 174:16	83:16
1 6:7 8:10 39:8	101:13 104:8	15180 4:7	2/13/25 6:10
39:9,21 40:5	105:4,8 107:19	153 6:22	2/14/25 6:17
41:2 48:22	110:14 111:11	157 7:3	2/28/25 6:20
53:21 62:9	111:14 113:4	15th 2:6 8:19	20 11:5 16:16
85:7 153:3	121:3 139:20	16:12	23:5,12,13
157:12 174:1,3	162:13,16,20	16 7:4 160:17	40:6 43:10
175:1,11,21	164:10 167:10	160:18,20	153:14 154:1
176:1,11,21	167:11,12,13	174:17	174:20 176:15
10 6:3,17	167:15 168:9	160 7:4	20001 4:14
113:16,17,21	169:1,21	1625 3:19	20003 4:8
114:3 174:11	13 6:21 66:10	16th 21:16,18	20005 2:7 5:8
100 29:6 136:7	66:14 107:14	17 7:9 174:18	20036 3:20
1000 2:6 8:20	120:10 122:7	177 3:7,13	2005 30:10
104 6:14	123:11,18	17th 115:14,14	2019 19:11
105 6:15	143:6,7 161:1	115:18	202 3:22 4:10
109 6:16	174:14	18 129:2	4:16 5:11,18
10th 65:17	13th 65:7,18	174:19	2022 16:13,13
102:10 161:7	66:21 98:2	19 174:20	19:12
161:14 167:6	100:16 111:14	1900 5:15	2024 18:1
11 6:19 55:14	139:20 161:7	1:16 2:4 8:3	2025 2:3 8:4
120:5,6 174:12	162:11 164:3	2	11:5 16:7,16
1100 5:7	164:12 167:19	2 6:8 43:4,5,9	16:20 17:5,8
113 6:18	167:20 168:13	44:14 48:17	17:12,15 18:15
	14 6:22 152:21	49:1 53:21	19:2,5 23:12
	153:1 174:15		23:13 40:6

[2025 - 600]

Page 2

41:17 42:5 43:10 45:8,18 46:21 66:10,15 75:21,21 76:1 90:13 92:4 107:14 116:19 120:10 121:8 122:8 123:11 123:19,22 124:1 129:2 142:3 148:16 151:3 154:2 161:1 162:6 174:3 20415 5:16 20th 11:19 13:22 14:15,18 15:5 16:11,20 21:9,11 23:22 25:20 26:17 27:9,10,18 35:9 37:12 40:12,14 41:2 42:16 44:15,20 45:5 48:16 53:18 54:1 55:16,18 56:3 63:5 65:4 67:7 70:15 76:6 85:2,6 92:19 140:20 143:22 148:7,16 152:11 165:14 166:17	21 56:8 174:21 21st 68:18 69:9 22 174:1,21 22nd 16:11 56:14 23 174:22 24 7:8 41:17 42:5 174:22 24th 37:19 38:12 42:18 56:18 67:9 68:8,10 69:3 70:2,16 72:6,8 25 23:5 123:22 124:1 153:14 26 2:3 8:3 26th 158:13,16 27th 57:2,10 58:2 139:21 28 75:21 142:3 28660 173:13 28th 71:19 72:11,13 73:17 74:14 75:14 78:7,14,17 80:22 2:03 44:8 2:05 44:11 2:09 48:9 2:13 48:12 2:28 62:4,5,10	3 3 6:9 7:8 13:11 54:14,15,18 108:15 156:20 174:3 175:3,13 175:23 176:3 176:13,23 3/20/25 6:22 3/26/2025 174:6 30 67:2,3 174:17 300 3:7,13 33606 172:16 38 7:9 39 6:7 3:25 1:12 8:17 3:29 62:14 4 4 6:10 13:11 66:5,6,9 148:15 151:3 157:2 174:4 175:4,14,24 176:4,14,24 40 144:13 415 3:10 421-7151 3:10 43 6:8 4:18 108:12 4:28 108:16 4th 6:21 143:5 143:11,12,14	143:21,22 144:10 148:6 149:3 150:3 5 5 6:11 75:11,12 168:19 174:6 175:5,15,25 176:5,15,25 50 144:13,13 146:3 54 6:9 594-9958 4:10 598-3869 5:11 5:17 156:21 5:30 104:7 105:8 5:31 157:3 5:34 105:4,14 106:14 5:45 171:10,15 5th 40:15 75:6 92:11,18 143:10,12,15 6 6 6:12 55:14 75:21 76:1 82:12,13,16 106:21 111:9 162:18 174:7 175:6,16 176:6 176:16 600 4:7
---	--	--	--

[639-6426 - administer]

Page 3

639-6426 4:16	82 6:13	accuracy	149:20 153:9
66 6:10	8:12 107:3	174:10	153:17 154:7
6th 75:5,9 78:7	9	accurate 20:19	154:18
78:15 80:5	9 6:16 109:20	115:15 126:16	activity 6:14
7	109:21 174:10	127:19 137:2	actual 52:21
7 6:14 66:1	175:9,19 176:9	172:9 173:5	actually 30:12
104:14,15	176:19	accused 150:14	30:15 33:3
106:13 162:6	936-3089 5:18	acknowledge...	36:15,19 42:8
174:8 175:7,17	94108 3:8,14	176:3	48:21 61:10
176:7,17	9th 161:15	acknowledg...	81:19 85:21
7269168 2:9	a	174:13	93:10 114:19
174:6 175:2	ability 155:1	act 84:9	120:16 123:1
176:2	172:10 173:7	acting 13:21	134:16 137:5,8
75 6:11	able 70:17	40:6 43:11	142:9 143:10
775-5900 3:22	102:22 138:22	44:15 45:8	148:3 149:7
7:20 106:8,18	above 174:7	46:22 74:13	162:9
7th 65:16 67:14	176:7	149:13 157:10	add 27:20
67:17,22 76:8	abrasive	action 6:22 9:3	30:12
77:18 78:18	125:14	82:19 83:6,7	added 73:1
79:18 80:11,11	absolutely	83:15,21 97:16	145:18 147:9
97:19 98:8,21	32:20 118:14	97:16 98:16	adding 146:1
100:1,4 102:9	accepted 20:21	106:2,22	addition 60:14
108:2 120:22	21:8,12 31:10	111:10 127:1,7	86:14
161:6 166:22	accepting	127:17 132:4	additional 56:9
8	106:9,9	139:18 140:7	112:12 128:9
8 6:15 45:8,17	access 76:12,16	172:12,16	additions 176:6
46:21 105:16	76:18	173:8,12	address 39:1
105:17 106:5	accomplish	actioning 97:7	73:17 82:17
174:9 175:8,18	49:7,15 50:3	actions 6:13	165:9
176:8,18	accountability	82:20 91:7,22	addresses
80 4:13	57:16	95:22 96:14	142:12,17
805 2:6 8:19	accounts 76:13	109:4 111:10	adjusted 111:3
		132:9 143:19	administer 9:2
		146:12 149:1	

[administered - agency's]

Page 4

administered 63:21	164:16,17 165:13,16	67:8 71:4 73:22 74:4,18	138:16,21 139:18 140:5
administering 63:11 64:9	166:3	76:7,21 77:15	140:10,14
administration 53:19 60:4,17 60:22 61:20 67:18 97:3 98:10,11 103:22 126:4	affiliates 165:21	77:17,21 82:2 82:6 84:2,12	141:1 142:21 143:18 144:1
	affiliations 9:10	84:18,20 85:7 85:11,17,20	144:14 145:6 145:19 146:11
	afge.org 4:15	86:8,15 87:3,6	147:2,7,10
	afl 1:6,9 3:3,4 3:18 4:3,4	87:18 89:1,3 89:13,19 90:1	148:8,17,19,21 149:7,8,18
administrations 155:6	afscme.org 3:21	90:8,10,19 91:21 92:4,8	150:4 151:4,18 159:6,10 160:2
administrative 25:15 26:22 27:4,14 40:8 54:9 72:22 109:12	afternoon 8:2 9:12 10:12 68:3	92:20 93:5,15 93:21 94:16 95:5,15 96:14	163:9,20 164:21 165:1 165:20,21
advance 21:11 23:12	agencies 27:22 28:17 29:1,9 29:16 30:17,19 31:6,13 32:1,6 32:8 33:10,18 33:20,21 37:13 37:16,18 38:9 38:20 39:12 40:7 41:3,17 42:3,17,22 43:11 48:16 50:14 52:6,13 53:2,7 54:2 55:2,10 56:11 56:20 57:5 58:15,20 59:15 59:19,22 60:3 60:10,11,20 61:12 65:20	96:14 97:6,12 97:15 100:1,4 100:7,11 101:11 102:4,5 103:2,17 106:11,22 107:13 108:2 108:20 109:3 109:11 110:10 111:1 112:5 113:6 114:7,18 115:2,5,8,11,16 116:4,19 118:20 121:7 122:6,14 126:3 127:11,13,21 128:18 130:11 132:8 134:15 135:11 137:14	agency 13:8 24:2 29:8 38:5 38:6,15 42:22 57:7 58:11 65:3 70:22 76:5 83:21,21 86:16,21 87:16 88:14 89:8,11 89:15 90:14 91:6 92:3 93:12 96:12,18 110:18 111:4 114:13 123:20 127:17 129:12 130:10 131:5 133:14 137:4 148:8 170:11
advised 121:13 121:15			agency's 31:2
advisor 11:1 20:22 21:9 22:2 38:16 62:17			
advocate 51:15 51:19			
affected 128:1			
affiliated 17:14 164:5,7,13,15			

[agenda - aside]

Page 5

agenda 49:6,14 50:3,12 51:5 51:11 aggressively 32:21 ago 24:21 86:1 agree 8:8 37:5 53:12 agreeing 137:14 agriculture 97:21 98:5 100:19 121:7 ah 48:22 ahead 21:6 59:8 90:4 124:17,19 ai 46:9 air 88:5 al 1:9,13 8:13 8:14 174:4,5 175:1,1 176:1 176:1 alert 138:21 alerted 117:12 aligned 22:22 allison 13:13 allocation 45:15 allocations 47:1 allotted 174:20 allow 102:21	allowed 136:11 136:19 alsup 37:3 59:5 altber.com 3:9 3:15 altshuler 3:6,12 amanda 14:9 14:17,20 15:9 15:14,18 22:9 25:1,4 46:1,8 46:16 82:18 142:3 amended 146:10 american 1:5,7 3:2,3,17 4:2,3 4:12 8:12 49:6 174:4 175:1 176:1 analysis 53:6 announced 73:8 80:21 106:3 107:10 answer 7:6 18:12,12,17 20:7 24:4,10 27:12 34:21 35:1,3 36:22 37:4 38:17 47:21 50:20 53:16 59:9 141:11 151:2 155:17,22 156:5 158:6	160:10 167:18 answered 18:20 26:8 35:12 49:18 50:19 answering 15:21 answers 18:7 113:13 anticipate 118:12 anybody 28:20 35:14 36:1 55:11 150:20 apologies 162:14 apologize 120:17 appeal 20:14 30:6,7,8 33:13 36:7 50:16 52:15 54:7 appearance 9:7 appearances 9:9 appended 176:7 applicable 93:12 153:11 174:9 applied 161:12 apply 46:1 appointee 102:22	appointees 54:7 65:20 67:1 163:9 appointing 43:14 appointment 12:16 31:17 153:11,17 154:19 155:2 apportionment 45:15 appreciated 18:13 64:6 appropriate 47:10 170:10 approved 170:10,13,17 170:19 approves 49:3 approximately 16:11 19:11 april 174:3 arbitrarily 51:15 areas 115:1 argumentative 51:13 52:9 aronov 5:22 8:20 arose 102:14 ascribe 131:1 aside 61:10 67:6 124:1
---	---	--	--

[asked - believe]

Page 6

asked 18:19 26:8 35:11 49:17 70:21 71:4 81:1,9,13 85:2 87:10 99:9,10 115:11 115:16 130:19 132:12 136:16	172:14 173:10 174:14 attorneys 16:9 16:10 audio 8:7 172:8 173:3 august 18:1 authentic 61:5 authorities 25:12 43:13,14 authority 73:3 136:20 148:22 149:19 153:4,8 153:16 154:12 156:10 authorize 161:11 authorized 9:2 availability 64:6 available 174:7 avenue 4:7 aware 17:7 18:14,17,22 46:8,13 58:19 60:2,6,19 61:15 70:20 71:2,8 76:3,5 80:3 85:10,17 88:3,4 94:14 95:4,13 104:8 104:10 105:13 105:19 106:1 118:22 119:5	131:18,19 133:21 135:3,7 136:5,7 140:21 144:7,18 146:5 150:20,20 151:11,16 152:16 159:4,5 159:7,9 165:19 awareness 85:16 105:11 b b 6:5 7:1 15:3 back 27:19 28:22 33:4 37:3 40:2 44:10 48:11,21 53:17 62:12 68:6,6 100:20 108:14 111:9 115:11 121:18 123:1 125:16 136:3,12,21 137:20 157:1 166:21 background 53:1 120:12 badger 37:8 based 17:14 24:4 94:11 101:20,22 118:7,19 123:8 123:12,15 135:5 143:19	146:12 149:20 153:10 154:19 157:16 160:3 161:22 basis 24:7 38:17 86:7 159:16 160:1 160:11 161:18 bcc 163:2,16 bears 31:13 began 11:4 24:16 78:10 97:15,16 101:21 beginning 9:10 62:13 108:15 128:2 157:2 168:5 behalf 3:2 4:2 5:2 9:17 belief 115:4 believe 18:16 18:22 20:8 32:8 37:16 47:2 51:5,8,11 51:17 58:13 72:4 77:20 81:17 84:16 97:22 99:16,19 100:19 103:22 104:14 106:10 117:18 129:5 140:15,22 145:9 154:10
---	--	--	---

[believe - central]

Page 7

154:21 160:3 161:19 believed 33:12 36:4 89:19 believes 114:20 137:5,8 berzon 3:6,12 best 18:12 168:1 172:10 173:6 beyond 127:18 138:13 139:5 139:13 150:19 big 45:10 bigler 5:12 9:18 bill 22:9 25:1 bit 68:6 115:22 bjelde 15:2 25:5 82:18 blumin 3:16 9:14 board 16:7 90:9 bob 9:18 bold 83:13 bottom 49:2 88:17 111:22 bounds 154:4 brackets 110:18 branch 153:10 break 39:1,5,17 39:21 48:4,14 61:4 88:13	108:5 130:10 156:17 bredhoff 2:5 8:19 brewer 16:8,10 16:14,17,19 17:4 100:16 brian 15:2,9,14 25:5 82:18 briefing 6:19 13:4 120:10,12 122:6 briefly 15:3 bring 52:21 broader 113:10 116:4 build 20:9 building 12:12 bullet 88:18 111:22 122:3,5 123:8 bumpy 128:18 bunch 13:16 business 67:18 98:9,11 103:21	call 39:5 64:19 66:10,15,19,21 67:22 68:17,21 69:8 71:16 77:7 100:15 101:3 102:7 128:20 138:20 139:2 162:6 166:22 167:1,6 167:7,9,11,12 167:13,14,15 167:16,19,20 167:22 168:2,3 168:8,9,10,12 168:15 169:11 called 10:4 16:8 17:11 31:9 36:12 40:7 55:6,20 56:1 57:7 66:9 82:17 103:10 152:13 calling 82:6 calls 24:2 38:15 65:8,16 68:10 68:15 71:15,18 71:21,21 72:5 72:8 77:8,11 78:10,11 79:10 80:16,19,20 101:20 162:3 168:7 169:4,15 170:4	cap 45:11 capacity 157:17 capital 21:22 55:1 149:16 career 12:2,3,6 13:5,5 43:13 45:16 54:6 57:11 careful 138:15 carmen 21:21 carry 124:4 case 1:11 6:14 8:16 34:4 40:22 90:21 98:9 120:9 140:11,15 154:4,17 157:11 cases 88:15 90:18 127:12 categories 88:12 category 28:2 cause 41:6 100:18 122:20 139:9 152:5 caveat 158:6 cbas 93:13 cc 37:16 83:5 cdc 132:17,21 133:9,12 134:6 central 117:22
	c		
	c 3:1 4:1 5:1,12 6:8 8:1 25:12 43:12,13 44:16 45:12 46:1 ca 3:8,14 california 1:2 8:16		

[certain - collect]

Page 8

certain 59:12 59:13 132:15 certainly 32:13 52:4 53:4 62:21 64:20 74:10 88:5,10 92:10,12 96:3 118:20 126:16 129:16 133:4 137:10 159:17 certificate 172:1 173:1 certify 172:4 173:2 change 36:20 45:10 47:1 175:4,7,10,13 175:16,19 changed 16:3 38:11 changes 174:11 176:6 characterize 132:19 charles 7:3 13:21 14:2 157:9 167:1,7 167:16,21 chaudhuri 4:5 9:15 chco 6:9,17 54:18,22 55:6 55:9 61:6,14 61:16 62:21	63:1,5,9,14,16 63:18 68:21 69:18 70:3,11 71:14,18 72:5 72:7 74:13 77:11 78:5,10 78:11 79:16 81:8,14 83:15 101:20 114:5 119:9,15,15,20 124:2 126:1 127:7 128:20 129:4,7 159:2 167:13,15 168:6,8,9,12,15 169:4,15 chco's 79:22 chcos 54:19 55:5 58:11,15 58:15 62:18,18 63:18,20 64:5 64:6,12 67:10 67:14 68:11,18 69:2,11 70:15 71:11,13,22 74:6 77:14 79:10,10 80:10 81:1,4,13 149:16 162:4 167:19 168:2 169:9,14,20 170:18 cheatham 129:8,20	chief 14:10 21:22 46:10 55:1 99:15 129:8 149:15 162:4 167:14 168:17 chiefs 65:8,19 66:22 67:4 74:6 128:13 162:7,8 163:5 167:21 169:20 170:14 choosing 132:2 chose 50:10 130:10 chosen 116:15 116:20 chris 9:18 christopher 5:5 christopher.h... 5:10 chron 55:13 chuck 13:7 14:1,3,14 38:6 38:11 170:15 170:19 cio 1:6,9 3:3,4 3:18 4:3,4 circuit 54:12 cited 30:9 civil 33:14 36:7 civilian 55:20 56:1	claim 85:12 clarification 19:17 29:13 39:6 40:18 55:12 118:15 clarified 140:19,20 clarify 27:12 128:8 138:11 161:3 clarifying 92:14 141:14 149:18 clear 29:7 59:9 92:12 144:8 146:10 client 144:7 158:5 clock 18:4,8,10 close 78:15 103:9 104:4 106:2 107:6 closed 6:15 78:7 81:21 98:22 103:18 104:1 105:20 106:3,7,17 closing 76:1 81:19 clue 46:6 coded 50:21,22 collect 29:2 32:7 33:10 35:9 37:20
--	---	--	---

[collect - conversations]

Page 9

144:2 collecting 144:15 145:7 colloquial 35:17 columbia 172:19 combined 86:20 come 27:19 48:21 97:13 103:3 167:3 comes 100:6,10 comfortable 132:5 160:13 coming 16:7 68:15 118:11 118:14,16 command 127:16 commence 82:2 comments 161:20 common 112:12 communication 96:18 101:14 137:14 142:2 communicati... 39:12,13 140:10,13,18 142:20 144:8 159:14 160:3	company 46:9 comparable 73:14 comparing 121:3 compile 42:17 69:4,13 70:2 70:17 compiled 17:13 17:16,19,20 complaint 119:4 138:1 145:4 complete 176:8 completed 121:5,10 123:5 174:17 completely 47:12 80:11 154:3,16 completion 93:22 complex 103:1 complicated 64:16 complied 64:2 compound 19:22 20:4 29:20 concepts 114:15 concern 69:2 69:12 70:16	concerns 69:19 concluded 171:16 concludes 171:10 conduct 31:6 148:1 153:11 153:18 154:19 155:2 conducted 113:6 154:9 conference 13:2 167:4 confused 131:11,15 congress 124:3 congressman 124:13 125:12 connection 103:13 consequences 31:18 consider 77:7 consideration 31:1,2 considered 156:9 considers 147:10,16 consistent 64:1 93:12 153:11 cont'd 4:1 5:1 7:1	contained 133:18 134:19 154:12 169:8 contemporan... 119:6 content 25:8 context 14:20 35:18 53:15 83:10 114:22 115:9 130:20 140:6 continue 8:7 37:1 73:6 continued 31:16,16 106:9 106:9 114:21 127:21 continues 46:8 continuous 154:7 contributor 19:2 controllers 88:6 conversation 22:8 46:18 119:15,20 134:7,13,13,18 134:18 135:4 conversations 8:5 22:10,14 22:18 23:1 26:2 70:3,15 102:5 133:8,12
---	--	--	---

[conversations - day]

Page 10

133:17,22	145:8,11,20	102:8	cycle 112:14
135:6,11 141:6	148:10,17	course 124:10	d
158:5	149:9 150:5	127:10 155:5	d 6:1 8:1 15:3
cooper 117:21	151:6,19	court 1:1 8:15	da 124:2
139:13	153:18 162:7	8:22 9:19	daily 64:6
coopersmith	163:6 168:20	34:17 41:6,6	danielle 3:5
99:13	169:2,6,16	47:12 75:19	9:12 10:12
coordinate	176:8	80:3 104:20	data 17:12
166:11	corrections	114:2 160:22	30:17
copied 142:7,19	176:6	create 62:2	date 2:3 17:1,2
copies 174:15	correctly 32:9	created 17:22	55:15 69:6
copy 39:22	cos 163:2,5	31:9 61:17	74:21 76:1
40:1 41:5 59:6	council 6:17	creating 157:19	78:20 79:22
82:18 120:17	55:6 61:6,14	creative 118:11	81:17,18,21
162:18	61:16 62:22	criteria 88:22	93:11 102:20
correct 11:2	63:1,5,9,14,16	critical 88:14	103:6,8 104:3
15:16,20 18:18	63:18 114:6	115:1,13,17	111:18 124:19
19:8 29:19	counsel 5:13,21	129:11 132:20	125:3 140:7
40:12 41:4	8:12 9:8,13,20	135:2 147:12	175:24 176:12
43:1 44:20	10:13,19 40:1	147:17	dated 44:14
46:2 58:12	40:22 41:9	cross 20:3	74:14 120:10
60:17 64:13	59:2 110:5	32:14 47:6,9	158:12
65:4 66:17	114:1 139:4	47:11,14,22	dates 65:14
67:11 68:13	141:6 172:11	126:13 171:8	day 11:8,17,19
70:22 72:15	172:14 173:7	crystal 126:1	11:20 12:9,11
73:18 78:21	173:10 174:15	cs 174:16	14:22 16:16,18
82:3 91:4 96:5	counselors 16:9	csra 19:19	16:19,21 21:1
98:6,22 99:2	counsels	20:11	23:18,21 25:7
100:1 101:14	138:20	current 114:22	26:10 37:11
104:4 105:21	count 67:3	115:9,9	40:10 42:22
108:20 110:11	county 1:8 3:4	currently 10:22	45:4 53:19
110:15 112:9	3:17 4:4	cut 34:18	56:8,14 63:14
121:13 135:12	couple 64:18	cv 1:12 8:17	63:17 67:20
136:12 139:22	84:4 87:9		

[day - different]

Page 11

68:18 78:18 83:16 97:2,11 98:21 107:1,14 115:14,18 176:15 days 37:18 75:3 144:13 146:3 174:17 dc 2:7 3:20 4:8 4:14 5:8,16 8:20 117:21 deadline 38:4 38:12 68:7 69:3 75:18 78:19 79:17 80:4,10,17 98:21 99:3,22 100:4 108:2 decades 154:19 decided 97:18 98:1,16,17 126:5 decision 98:4 129:12 134:16 148:8,17,20,21 149:8,19 150:5 151:19 decisions 145:20 151:5 declaration 7:3 7:4 38:21 157:9,15,19 158:2,19 160:21 161:22	166:21 declare 176:4 deemed 110:19 176:6 defendant 5:2 defendant's 6:10 66:10 160:22 defendants 1:14 9:17 defenders 4:6 17:18 defense 131:7 deferred 6:11 63:11,15 64:9 71:19 72:10,12 74:7,18,21 75:14 77:12 78:5,12,19 79:4 80:5,21 102:13 103:10 121:14,16 126:6,18,19 defining 30:2 degree 31:19 31:20 deia 56:10,13 56:19 57:1 109:11 delay 144:19 delegate 153:15 154:11 delegated 153:8 154:22	delegation 153:4,22 154:2 deliberate 132:18 deliberations 38:16 deliberative 24:4 38:18 39:14 democracy 4:6 17:16,17 demonstrated 31:15 department 5:6 9:17 87:21 90:22 97:21,22 98:4 100:21 121:7 131:7 departments 37:15 38:8 40:7 43:11 58:14 59:22 74:14 149:14 deponent 44:3 174:14 176:3 deposing 174:14 deposition 2:1 8:11,18 10:15 10:19 37:2 47:7,8,13,14,17 47:22 59:4 172:1	depth 114:6 deputy 13:14 58:15 62:18 126:1 describe 12:8 described 22:9 36:5 88:20 91:3,5 161:8 describes 153:4 describing 66:22 description 6:6 7:2 20:6 22:1,7 designated 165:21 detailed 53:5 details 40:9 54:10 75:16 determinations 99:21 116:5 118:4,9 153:5 153:9,16 155:2 determine 86:15 132:14 determined 127:12 determining 135:1 dialogue 63:20 difference 45:14 different 23:16 25:6 26:14 33:2,7 34:6
--	--	--	---

[different - drp]

Page 12

45:13,16 63:10 68:1 118:8 130:12 145:6 158:20 difficult 36:15 difficulty 14:4 digital 172:8 173:3 direct 70:14 75:17 94:11 120:11 132:10 157:11 159:6 159:10 160:2 directed 55:9 58:14 118:4,9 122:6 127:22 128:1 129:9 directing 117:8 117:22 139:6 143:18 146:11 direction 28:17 40:19 123:9,12 123:15,20 124:6 127:16 129:13 131:12 131:14,21 136:10 directions 116:21 directive 125:7 directly 37:4 69:19,22 77:21 98:12 99:6 100:7,10	director 11:1 13:21 22:3 45:8 46:22 62:17 152:12 153:7,15 154:1 154:9,12,22 157:10 directors 55:9 58:15 149:17 disclosure 6:10 66:10 101:2 162:10 163:13 discuss 24:17 24:19 25:2,5,8 26:15 27:9,17 39:16,20 68:11 138:22 discussed 25:6 26:20 27:5 67:11,14 100:15 116:9 154:6 162:4 166:15 discussing 48:15 134:5 discussion 24:3 discussions 26:21 27:3 96:13 102:8,11 127:3 disempowered 60:11 dissolved 105:2	distribution 58:16 district 1:1,2 8:15,16 80:3 104:20,20 172:19 division 1:3 8:16 dleonard 3:9 docket 41:7 document 37:14 44:17 49:12 55:15 66:9,13 90:13 92:2,8,20 93:2 93:14 94:3 96:17 111:7 116:18 120:8 120:15,21 122:2 123:2 137:13 148:6 148:15 149:6 150:4 151:3,9 151:16,18 153:3 154:13 161:2,12,17 documents 10:14,18 23:4 23:12 25:17 52:22 93:3 130:16 149:12 151:22 152:1 154:21	doge 67:4 163:2,18,19 164:5,7,11,13 164:16,19,22 165:5,9,14,17 165:21 166:3,8 166:12,16 doi 99:16 100:6 doing 21:8 30:17 32:17,18 32:18 48:1 54:13 90:10 93:22 98:21 136:2 139:6 150:15 doj 135:21,22 136:1 140:22 doubt 61:7 downsizing 50:4 draft 24:3 42:18 44:2 drafted 24:11 24:16 26:10 38:12 40:11 42:15 49:11,12 drafting 24:13 24:16 drafts 23:16,20 drawn 28:4 drive 49:5 driven 96:12 drp 102:14,18 103:1,10,15,18
---	--	---	--

[drp - employees]

Page 13

104:1,4 139:1 due 82:19 83:6 106:22 111:10 duly 10:4 172:5	eisen 5:21 40:22 either 22:1 25:19 93:11 111:18 121:13 151:17 169:19 elected 49:6,15 election 17:22 electronic 104:21 161:11 eleven 120:1,2 eligible 121:14 126:5,17 elon 46:9 155:9 email 6:12,14 6:17,20 21:20 53:5 73:16 74:8,15 76:12 82:6,16,17,22 83:2,20 88:17 94:12 95:19,21 96:3,8 97:5 98:2 104:18 106:5,21 107:12 111:11 111:11 112:9 113:4 114:5,19 122:13 127:4,5 128:6,10,12,13 139:20,21 142:7,12,17 162:13,16,20 164:10 165:9 168:22 169:11	169:16 emails 52:21 61:18 77:16 110:14 125:17 125:18,19 130:7 131:2,3 169:22 embedded 163:19 emphasize 116:3 employed 10:22 16:8,10 16:14,15 17:3 46:9 172:11,14 173:8,11 employee 6:13 12:17 15:16,17 15:19 16:1,6 19:8 24:7 28:17,18,21 29:2 30:16 31:13,14 37:20 40:20 53:6 67:9 69:13 71:5 72:14 77:5,17 82:19 92:16 111:10 125:8 126:2,9 146:22 172:13 173:10 employee's 114:16	employees 1:6 1:8 3:3,4,18 4:3,4,12 8:13 12:15 20:15 25:12 27:8,10 28:7,11 29:17 29:18 31:10 32:7 33:13,14 35:10 36:6,8 41:17 42:1,4 46:1 50:5,15 51:1,10 52:15 53:20 54:2 59:16,20 60:12 60:16,21 61:19 64:2 65:10 67:19 68:13 69:5 70:18 73:13,17 76:8 77:9 78:21 79:6,18 82:3,8 83:22 84:3,8 84:13,20 85:7 85:9,11,21 86:8,11,16 87:7,12 89:2,8 90:15 91:1,12 92:16,21 93:16 94:15,21 95:1 95:2,5,14 96:4 96:8 97:17,19 98:1,6,18 100:14,18 101:1,13
e			
e 3:1,1,5 4:1,1 5:1,1,15 6:1,5 7:1 8:1,1 15:3 15:3 175:3,3,3 earlier 72:5 81:18 91:3 early 16:12 63:13 73:2 eastern 105:5 105:14 106:14 106:18 easy 29:18 36:19 ecf 104:19 110:7 113:21 edited 147:20 education 101:17,17 eeoc 87:14 135:16 effective 33:20 33:22 102:20 103:8 132:22 effectively 30:11 effort 64:4 eight 72:21			

[employees - exhibit]

Page 14

102:13 103:5	60:5 61:12	5:5,12 174:1	155:19 165:22
103:18 107:13	72:15 73:11	established	166:1
109:11,19	78:9 114:21	148:1	exempt 84:12
110:11 112:2,6	encouraged	et 1:9,13 8:13	84:13 88:10,10
112:14,18	32:1 53:7	8:14 174:4,5	88:15 89:8
113:5 114:9	encouragement	175:1,1 176:1	114:9 132:8
115:12,16	93:20 94:4	176:1	exempted 88:5
118:22 119:11	encouraging	evaluation	89:1 127:13
121:4,9,14,16	84:9 114:15	112:8 113:6	exempting
122:7,15 123:5	115:8	eventually 73:1	90:19 91:1
123:10,17	ended 16:22	everybody	exemption 82:7
126:5,7,17	81:19	102:17 114:11	87:15,17,19
127:14 128:1	engage 97:13	evidentiary	88:16 134:6
128:17 129:4,9	114:12	161:1	135:11 136:8
130:10 132:2	engaged 63:20	ex 160:22	136:11 140:4
132:19,22	127:9 130:7	exact 84:11	exemptions
133:5,9 134:17	137:19	exactly 16:18	88:9,19,20,21
135:1,17	ensure 138:16	20:6 46:20	93:22 116:8,13
136:10 139:19	147:22	47:8 141:2	117:5 122:3
141:3 144:16	entered 105:1,4	examination	127:10,11
145:11,17	entire 34:22,22	6:2 10:8	130:7,17
146:13 147:3	133:1	examined 10:6	exercise 90:5
148:9 149:9,21	entirely 24:17	examining	97:14
151:5 153:10	26:4,11 27:16	47:11	exhaust 160:1
155:10,14	35:22	example 36:20	exhibit 6:7,8,9
159:6,11,18	entitled 43:12	61:17 90:21	6:10,11,12,14
160:4 166:16	errata 174:12	except 77:6,6	6:15,16,17,19
169:6,19 170:3	174:14,17	129:10	6:20,21,22 7:3
174:4 175:1	es 172:4	exchange	7:4 39:8,9,21
176:1	especially	124:12	40:1,5 41:2
employment	32:19 35:21	executive 13:14	43:4,5,9 44:14
11:4 16:17,19	71:17	43:13 56:10,13	48:17 53:20,21
17:2 19:19	esquire 3:5,11	57:15 153:10	54:14,15,18
31:16 58:20	3:16 4:5,11 5:4	154:5,10 155:5	66:5,6,9 75:11

[exhibit - federal]

Page 15

75:12 82:12,13 82:16 85:6 101:4 104:13 104:14,15 105:16,17 106:5,13,21 109:21 111:9 113:16,17,20 114:3 120:5,6 141:18,20 143:6,7 153:1 157:7 160:17 160:18,20 162:10,14,18	extended 37:4 80:4 extent 24:1 38:14 67:13 128:20 147:19 158:4 eyes 85:3 ezell 7:3 13:22 14:2,14 38:11 157:10,15,19 158:17 159:9 167:1,7,16,21 168:3,9,12	63:7 64:1 66:1 117:16 139:8 false 80:11 153:20 familiar 19:18 43:17,20 54:20 80:6,8 152:10 161:2 familiarity 20:10,14,19 faqs 159:4 170:3 far 25:10 73:11 125:6 129:18	111:11,13,14 113:4 115:14 115:14,18 116:19 120:10 121:8 122:7 123:11,18,22 124:1 125:22 129:2 137:20 139:19,20,21 139:21 142:3 158:13,16 161:6,7,7,7 162:6,10,13,16 162:20 164:3 164:10,12 166:22 167:6 167:10,11,12 167:13,15,19 167:20 168:2,9 168:13 169:1 169:12,15,21 169:21
exit 73:10 expansion 49:4 expansive 49:5 49:14 50:2 51:4,11 expectation 30:21 expected 30:3 125:6 experience 22:22 experiences 100:17 expiration 74:21 79:4 expire 78:19 expressed 69:2 69:19 70:16 expressing 69:12	f f 4:13 57:18 faa 88:5 faced 125:13 fact 34:2 51:21 64:11 68:17 69:2 81:1 85:21 89:13,19 91:5,10 96:11 96:11 103:16 103:20 117:15 138:20 141:12 161:22 164:20 facts 38:19 39:3 factual 145:5 146:5 fails 174:19 fair 19:17 20:13 57:19	fbi 156:2 fda 136:18 february 63:13 64:20 65:7,16 65:17,18 66:10 66:14,20,21 67:14,17,22 72:19 75:4,5,6 75:9,21 76:1,8 77:7,18 78:7 78:15,18 79:18 80:5,10 81:22 82:1,6 88:17 90:13 92:3 97:5,19 98:2,8 98:21 99:17,20 100:1,4 101:13 105:4,8 107:14 107:19 108:2 110:14,14	federal 11:4,20 12:15 15:16,17 15:19 16:1,6 19:7,19 20:14 28:12 30:11,14 31:17 33:10 34:14 37:12,18 37:19 42:3 48:16 50:4 52:6,13 54:1 55:2,20 56:1 56:11,20 57:5

[federal - form]

Page 16

57:17 58:20	150:10,11,18	first 10:4 19:7	105:19 106:6,7
60:5,16,20,20	152:8 158:11	21:1 49:2	106:17 107:6
61:12,12,19	filing 104:21	53:19 58:9	form 21:3 63:8
65:20 70:22	fill 110:18	60:4,16,21	64:14 65:5,21
72:14,15 73:6	filled 12:17	61:19 65:16	67:12 68:19
73:11,13,17	final 127:17	71:20 78:9	69:7,15,21
76:5 77:15	153:8,16	97:2,11 115:10	70:7,13 71:1
89:15 92:3	financially 9:4	120:14,20	72:16 73:19
94:15 108:19	172:15 173:11	122:5 131:16	74:2,9 76:9,14
109:3 110:10	fine 135:18,20	150:18 154:3	77:1,19 78:22
121:6 144:1	135:22 136:1	fitness 31:16	79:7,12,20
147:10 152:14	156:5	152:13	80:7,15 81:3
156:9 163:9,20	fingerprinted	five 108:6	81:11 82:4
165:20	21:10,11	flexibility 73:2	83:9 84:1,22
federation 1:5	finish 13:19	flip 115:10	85:14 86:2,12
1:7 3:2,3,17	126:22	flra 19:11,18	87:20 89:5,21
4:2,3,12 8:13	fire 28:16,18,21	focused 31:7	90:16 91:13
174:4 175:1	50:22 52:6	132:13	92:6,22 93:18
176:1	80:10 95:6,15	follow 114:5	94:5,17 95:16
feedback	114:11 119:10	followed 136:9	96:6,21 98:13
128:16	122:14 125:7	following 56:14	98:15 99:1,7,8
feel 160:13	136:19 137:2,9	105:3 138:17	99:10 100:2,9
feelings 47:16	137:10,11,15	follows 10:6	101:15 103:7
fellow 27:1,2	146:17,20,21	124:3	103:19 104:9
felt 132:5	148:9	food 136:18	105:9,22 107:8
fewer 33:13	fired 51:15,16	footnote 47:3	107:16,22
fielding 77:22	51:20,21 52:14	foregoing	108:21 109:5
78:2	96:5,9,20	172:3,4 173:4	109:13 110:21
file 57:13 138:5	145:18	176:5	112:10 113:8
filed 8:14 41:6	firing 51:9,9	forest 6:19	115:20 116:11
41:7 110:3,5	127:18	120:9 121:4	116:22 119:1
117:14,18	firings 139:6	122:9 123:3	119:13 121:21
120:8,21,22	firm 8:22 16:8	fork 6:15 79:4	122:10 123:14
145:4 146:7	127:16	81:18 98:22	124:9 126:10

[form - fuchs]

Page 17

128:5 129:15	61:22 129:3	fslmrs 19:20	90:16 91:13
131:13 133:2	131:7 133:17	fuchs 5:4 9:16	92:6,22 93:18
133:10,20	foundation's	9:16 11:12	94:5,17,22
134:3,20	17:5 19:5	14:11 18:19	95:7,16 96:6
135:13 136:13	four 37:18	19:21 20:16	96:21 98:13
136:22 137:7	127:18 139:6	21:2,6 22:12	99:1,8 100:2,9
137:17 140:1	139:13 150:19	23:6,14 24:1	101:15 103:19
142:22 145:12	171:12	25:21 26:7,18	104:9 105:9,22
145:21 146:18	framework	29:20 32:10	107:8,16,22
147:4,6,7,13	53:6 91:20	33:15 35:11	108:7,9,21
148:11 149:10	francisco 1:3	36:9 37:8,22	109:5,13
150:7 151:7,20	3:14 8:16	38:14 39:11	110:21 112:10
152:15 153:19	francisco 3:8	44:3,21 46:3	113:8 115:20
154:14 155:3	free 132:8	46:11 48:2,5	116:11,22
156:12 157:20	141:11	49:17 50:6,17	119:1,13
159:12 160:5	freestanding	51:6,13,22	121:21 122:10
163:10,21	103:11	52:9,17 54:3	123:14 124:9
164:6,14 165:2	freeze 55:21	56:5 57:20	126:10 128:5
165:7,11,15	56:2 88:11	58:4,22 61:1	129:15,22
166:5 170:1,8	frequency 63:6	61:21 63:8	131:13 133:2
formal 57:14	fresh 33:18	64:14 65:5,21	133:10,20
112:20 113:11	friday 14:22,22	67:12 68:19	134:3,8,20
132:13	15:7,15 22:8	69:7,15,21	135:13 136:13
former 46:22	24:22 46:16	70:7,13 71:1,7	136:22 137:7
forms 12:17	64:20 65:8,12	71:12 72:16	137:17 140:1
forward 31:2	65:13,13,16	73:19 74:2,9	141:8 142:22
foundation	102:9 114:5	76:9,14 77:1	145:12,21
17:17 18:15	125:22 128:20	77:19 78:22	146:18 147:4
21:3 23:7	142:3	79:7,12,20	147:13 148:11
26:19 29:21	frivolous 47:20	80:7,15 81:3	148:18 149:10
32:11 38:1	front 48:17	81:11 82:4	150:7 151:7,20
44:22 46:4	54:13 111:12	83:9 84:1,22	152:15 153:19
50:7 51:7 52:2	117:20 139:12	85:14 86:2,12	154:14 155:3
52:10,18 59:1	162:16	87:20 89:5,21	155:15,18,21

[fuchs - handed]

Page 18

156:5,12 157:20 158:4 159:12 160:5 163:10,21 164:6,14 165:2 165:7,11,15 166:5,9,18 170:1,8 171:4 171:7 174:1 full 44:16 84:11 87:17 102:22 fund 4:6 further 111:21 127:1 171:4 172:13 173:9 fuzzy 113:21	generous 73:12 73:14 george 104:22 getting 31:19 78:11 give 18:6 33:18 43:15,19 44:3 53:1 76:7 108:1 124:21 159:1 given 22:1 32:19 57:22 68:7 79:22 80:17 81:6 106:8 136:20 140:4 171:11 176:9 giving 38:4 80:9 84:6,7 131:12 140:7 go 8:8 14:7 18:8 21:6 28:22 33:4 34:10,17 38:3 44:6 48:2 50:22 55:13,14 59:8 62:3,6 68:6 87:9 90:4 111:9,21 123:1 123:4 124:17 124:19 goes 14:3 48:22 125:6	going 8:3 18:2 18:4,6 21:15 25:13 29:11 30:13,21,22 31:2 33:5,6 34:18,20 35:3 36:21,21 39:2 39:7 43:3,15 43:16,19 44:5 47:13,22 48:8 53:17 59:2 62:8 75:15 83:21 88:13,13 89:12 96:4 104:4,17,18 108:5,10 113:19 120:11 121:18 125:16 137:21 141:13 143:6 144:8 150:14 155:15 156:19 157:5 166:21 good 8:2 9:12 10:12 22:15 32:6 61:3 108:7 government 1:6 3:3 4:3,12 8:13 30:14 60:15 64:1 73:8 95:19,21 96:3,8 148:3 174:4 175:1	176:1 granted 87:16 89:4 granting 87:19 grants 88:4 great 20:2,2 114:6 group 64:4 gsa 101:17,17 guess 49:19 95:18 guidance 6:7 40:7 56:2,10 56:12,15,16,18 56:22 57:11,14 61:14 64:8 74:15,18 77:13 97:2 112:12 114:10 125:18 126:21 131:2 138:11 140:5 140:20 158:22 guy 34:11 guys 138:4
g			h
g 8:1 game 122:19 garcia 21:22 gardner 129:4 129:7 gather 28:1 gating 34:15 gc 13:14 gene 5:22 8:20 general 5:13 12:9,11 19:10 19:14 22:6 23:11 88:8,8 138:20 139:3,3 generals 47:2			h 6:5 7:1 175:3 half 144:11 hall 5:5 9:18 hand 10:1 39:22 handed 66:8 82:15 104:18 113:20 120:4

[handed - include]

Page 19

120:16 160:20 handle 103:14 hands 75:19 happen 15:4 25:7 63:18 happened 13:11 71:16 80:1,21 100:16 113:22 114:11 128:21 130:6 132:2 167:10 happening 32:3 63:17 85:16 125:12 happens 102:16,18,21 happy 22:21 hard 142:18 harris 126:2,8 127:21 128:4 head 13:8 75:9 152:3 162:15 heads 37:15 38:8 40:6,6 42:22 43:10,11 44:15,15 55:9 56:20 58:12,14 58:19 59:22 74:13,13 149:13,13 hear 100:8 hearing 102:1 161:1	held 63:1,3,6 63:10 65:2 75:2 help 23:4 helpful 120:18 helps 162:18 hereto 172:15 173:11 176:7 heritage 17:4 17:20 18:15 19:1,4 hey 34:11 87:10 103:4 high 31:20 132:15 higher 34:14 highest 114:22 highlighted 120:17 121:2 hiring 55:20 56:1 88:11 hold 37:1 holiday 11:20 12:1 37:19 honestly 142:8 hour 11:18 107:10 house 152:20 hr 12:20,20 55:9 58:15 hud 101:18 human 21:22 55:1 149:15,16	i idea 26:5,15,16 27:3,13,21 28:22 29:3,15 32:6 33:3,9,12 33:17 35:6,10 35:22 46:13 49:21 60:10 73:4 117:8 127:15 137:1 139:4 ideas 26:21 identification 39:10 43:6 54:16 66:7 75:13 82:14 104:16 105:18 109:22 113:18 120:7 141:21 143:8 153:2 157:8 160:19 identified 43:9 82:8 101:10 115:13,17 116:1,7,13 identify 28:13 28:14 29:12 30:4 41:17 85:7 116:18 identifying 29:16 114:8 ignore 89:20	ignored 89:13 illegal 150:15 immediate 113:5 immediately 67:20 93:11,16 94:16 95:6,15 111:18 112:6 128:3 132:22 138:10 140:19 141:4 146:10 implementati... 57:4,8 implementing 57:14 important 31:18 41:20 116:3 128:8 impose 91:15 91:17 imprecise 115:22 inaccurately 20:8 inappropriate 47:12 inauguration 11:7,10,14,17 11:19 12:13 14:22 16:16 incident 126:20 include 42:16 42:18 68:1
--	--	---	--

[included - january]

Page 20

included 73:3 76:17 includes 40:17 50:4 62:18 162:3 including 9:8 19:19 37:19 48:16 93:13 106:12 121:7 indicated 84:7 indicates 122:17 individual 114:14 148:2 individual's 110:19 individuals 66:13 100:7,11 102:2,3 163:19 164:4 165:20 influencing 57:16 info 17:15 information 28:1 89:3 110:6 157:16 157:18 158:2,8 158:16 159:1 161:18,21 initial 12:17 28:6,11 30:7 56:9,12 78:16 139:10	initially 40:13 42:12 49:20 75:2 136:9 139:8 input 26:11 63:19 inspection 87:16 inspector 47:2 instances 87:9 87:10 instruct 24:3 38:17 52:6 158:5 instructed 7:6 67:7 144:1 instructing 54:1 instruction 24:8 42:16,19 60:3 67:10 instructions 60:15,19 61:11 intent 40:18 64:2 130:5 131:1 138:12 intention 146:14 interacted 16:3 interaction 102:12 103:14 interconnected 34:8	interested 9:4 172:15 173:12 interior 97:22 98:5 100:21 101:6 internal 29:10 38:15 interpreted 28:20 interrupt 18:2 36:22 intra 24:2 introduced 13:7 14:21 invitation 67:4 invoking 132:12 involved 19:4 27:2 76:3 78:4 78:11 133:8,11 133:17 135:10 135:14 140:10 140:12,17 irrelevant 154:16 irs 131:7 issue 38:20 39:3 64:17 77:18 102:14 137:20 issued 23:18,21 27:8 37:12,14 40:13 41:3 42:22 48:15	53:18 54:1 55:18 58:19 67:6 80:4 97:10 118:14 140:11,11 143:22 152:11 issues 33:19 103:1 138:22
			j
			j 15:3 james 82:17 january 11:5 11:19 13:22 14:14,17 15:5 16:7,16,20 21:9,11,15 23:5,12,13,21 25:20 26:16 27:9,10,18 35:9 37:12,19 38:12 40:5,12 40:14 41:2,16 42:5,16,18 43:10 44:14,20 45:4,7,17 46:21 48:16 53:18 54:1 55:16,18 56:3 56:8,14 57:2 57:10 58:2 63:5 65:3 67:7 67:9 68:8,10 68:18 69:3,9

[january - know]

Page 21

70:2,15,16	k	138:21 146:5	89:7,10 90:3,6
71:19 72:6,8	kaiser 2:5 8:19	152:6	90:8,9,10,19,20
72:11,13,20	kaylee 100:16	king 11:20	91:6,21 92:14
73:17 74:14	keenan 27:2,5	kmiec 27:2	93:3,4,6,20
75:14,21 76:6	27:13	knew 15:21	96:13 97:13,15
78:6,14,17	keep 28:14 84:4	74:4 86:3	102:21 103:4,6
80:22 85:2,6	84:21 85:12,22	91:12 95:15	105:10,12,13
90:13 92:3,19	86:9 87:6,11	158:21,21	109:6,8 111:2
116:19 140:20	116:1,8 131:8	159:17	111:3,5 112:13
143:22 145:19	134:16 135:17	know 12:15,20	112:17,18,19
148:7,16	key 163:2,8	13:7 14:2	112:22 114:8
165:14 166:17	kidd 13:13	15:22 20:6	114:10 115:4,5
job 2:9 21:19	kind 13:15 15:5	22:19,20 25:11	116:2 117:1,2
21:20 22:1,6,7	15:6 24:2	25:16 28:3,4	117:7,21
24:19	30:20 31:20	29:5,13 30:21	118:15 119:18
joint 55:22	34:3,8,9 35:17	31:13,18,19,22	120:13 122:1
57:3,6	53:11 63:19	32:2,17 33:21	122:21 124:11
judge 36:19	64:8 73:10	33:22 34:2,10	124:12,17,19
37:2 39:5 59:5	84:9,14 86:19	34:11 36:16	124:20,22
104:22 106:13	89:10 93:22	38:6 39:6 42:7	125:2,4,9,10,11
117:21,21	95:20 103:1	42:8,10,14	125:12,13,15
120:9 138:10	114:4,8,12,13	53:7 58:16	125:16,17,19
139:12 146:9	114:14,15	59:12,12,14,14	126:12 127:1,4
161:4	115:7 116:3,4	59:15,17 60:8	127:5,6 128:15
judge's 110:6	117:3,9,13	61:7 62:20	128:17 129:5,5
161:20	118:7,11	63:4,19,22	129:6 130:3,3
judgment	122:18 124:13	64:2,3,17	130:8,8,10,12
34:17 36:14,16	124:17,22	68:14 71:21	130:13,14,18
36:17,20	125:4,5,14,15	72:2 73:9,22	130:18,21
jurisdiction	125:20 126:12	74:3,4 75:2,7	131:22 132:1,4
59:13	126:13 128:7	76:16 83:15	132:10 133:5
justice 5:6 9:17	128:20 130:4	84:7,8,10	134:9,11,12,14
87:22 90:22	132:5 135:5	85:20 87:10	134:15,17,22
		88:4,9,12,14,22	135:4,15,18

[know - leonard]

Page 22

136:3 137:10 137:22 138:14 138:16 139:15 140:3,5,7 141:1 142:8,9 143:11 144:13 144:13 145:14 146:6,9,14 147:15,16,18 150:15 151:8 151:10 154:6,8 154:8 156:2 158:20 159:19 159:19,21 160:15 161:4,8 161:9,16 163:13,22 165:3,17 167:17,18 168:5,11,14,14 170:20 knowing 162:14 knowledge 12:6 15:18 17:10 32:3 61:11 79:8 86:7 89:18 90:1 98:4 100:6 119:6 128:8 130:12 135:6 157:16 160:9 161:19 162:1 172:10	173:6 known 16:4 57:18 90:7 101:17 118:13 150:17 160:2 160:12 I I 3:19 5:7 15:3 labor 156:9 lack 21:2 23:7 26:18 29:21 32:10 37:22 44:21 46:3 50:6 51:6 52:1 52:10,17 58:22 61:21 land 39:7 language 48:21 49:8,10 50:22 53:11 120:11 120:19 121:11 121:18 128:2 143:13,16 147:9 149:18 150:17 law 16:8 91:19 153:12 laws 19:18 138:15 lawsuit 110:3 117:8,13,18,20 118:1,1,2,5,6 118:13 119:7	131:18 138:5 139:10,12,15 144:18 146:6 150:10,11,18 152:7 lawsuits 118:19 lawyers 166:11 lay 85:3 lead 32:20,21 leadership 12:7 33:17 170:11 leading 19:21 20:16 26:7 29:21 32:11,13 32:19 50:17 leads 67:5 163:2,18 164:11 learn 98:12 learned 67:18 68:4 98:8 141:6 159:20 leave 25:15 26:22 27:4,14 40:8 54:9 72:22 109:12 led 161:19 legal 64:16 117:13,17 118:11 127:17 138:6,19,22 139:16 144:18 145:2 146:5 150:9 174:22	leonard 3:5 6:3 9:12,13 10:9 10:13 11:15 14:13 19:3 20:12,20 21:14 23:3,10,19 24:6,9 26:3,13 27:6 32:4,14 33:1 34:18 35:2,13 36:10 37:10 38:10,19 39:16,20 40:3 40:21 41:1 44:5,12 45:2 45:19,21 46:7 46:14 47:4,15 48:3,7,13 50:1 50:13 51:3,12 51:18 52:5,12 53:13 54:11 56:7 58:1,6 59:2 60:1 61:8 62:7,15 63:12 65:1,11 66:3 68:5 69:1,10 69:17 70:4,10 70:19 71:3,10 72:3 73:15,21 74:5,11 76:11 76:19 77:4 78:3 79:2,9,15 80:2,12,18 81:7,16 82:10 83:12 84:15
---	--	--	--

[leonard - lot]

Page 23

85:5,19 86:6	152:9,18	68:2 70:17	llp 3:6,12
87:1 88:1	153:21 154:20	86:20 94:1	location 2:5
89:14 90:11	155:7,16,22	97:14 103:6	8:18
91:2 92:1,17	156:4,7,13,16	133:1,18	long 11:16
93:9 94:2,13	157:4 158:1,9	162:11 164:3	30:14
94:20 95:3,10	159:15 160:6	164:12	longer 37:3
96:1,16 97:4	163:15 164:2,9	listed 17:7,10	75:3 147:10
98:19 99:5,11	164:18 165:4,8	17:10 18:1,14	look 20:5 22:4
100:5,12	165:12,18	42:9,13 55:15	33:18 40:4
101:19 104:2	166:7,14,20	59:21 66:14	42:7,10 44:14
104:12 105:15	170:6,12 171:1	164:10	48:20 49:2
106:4 107:11	171:6	listing 42:1	55:11 82:11
107:20 108:4	letter 22:4,19	85:8	85:18 86:4
108:17 109:1,9	53:3 83:17	lists 28:1 32:7	101:2 109:18
109:17 111:8	98:15 99:7	55:22 68:12	114:15,19
113:2,14 116:6	108:19 109:2	69:4,13 70:2	115:8 116:4
116:17 117:15	147:6	70:21 71:5	130:19,19
118:17 119:8	letters 53:3	76:7 77:5,14	142:2 158:12
119:21 120:2,3	99:10 103:12	78:1 84:3,17	162:10
122:4 123:7,21	lifted 81:20	84:20 85:3,11	looked 25:17
125:21 127:20	104:7,11 105:8	85:13,17,21	114:13
129:1,19 131:4	105:12,12,21	86:8,10,18	looking 30:3
132:16 133:7	lifts 106:14	96:19 97:7	55:19 138:1
133:15 134:1,4	limited 45:16	108:3 127:11	169:1
134:10 135:8	54:7 88:22	134:5 144:2,15	looks 41:5,7
135:19 136:17	line 7:7 37:16	145:7	67:2 83:10
137:3,12	82:19 83:5,6	litigating	110:2 120:22
139:17 140:8	111:17 163:1	137:20	lose 141:17
141:9,16,19	175:4,7,10,13	litigation 65:7	losing 125:13
142:1 143:3	175:16,19	114:2 137:19	lot 36:17,18,18
145:16 146:15	lines 136:7	little 68:6 72:4	53:10 64:5
147:1,8 148:5	list 17:13 42:4	111:21 115:22	90:8 102:11
148:14 149:2	42:11 66:13,17	142:18	103:3 107:18
150:1 151:1,15	66:20 67:8		112:14 118:10

[lot - meetings]

Page 24

138:18 lots 59:19 63:10 121:15 128:15 luther 11:20 lying 69:20 70:12 79:19 81:10,13 119:12 124:8 125:11,18 126:9,13,14,15 129:14,17,21 130:4	makes 32:20 154:2 making 94:1 97:14 116:5 148:21 149:19 managed 147:21 management 1:13 5:3,14 8:14 11:2 121:9 124:7 126:4 129:8 152:12 174:5 175:1 176:1 managers 132:17 march 2:3 6:21 40:15 92:11,18 120:22 143:5 143:10,10,21 143:21,22 144:10 148:6 148:15 149:3 150:3 151:3 152:11 153:14 154:1 161:1,14 161:15 mark 39:8 43:4 54:14 66:4 75:11 82:11 104:13 105:16 109:20 113:15 119:21 141:13 143:4 152:19	157:5 160:16 marked 39:9 40:5 43:5,8 54:15 66:6,9 75:12 82:13,16 104:15 105:17 109:21 113:17 113:20 120:5,6 141:20 143:7 153:1 157:7 160:18 marking 39:21 martin 11:20 maryland 118:7 massachusetts 80:4 104:20 matt 9:14 matter 8:12 matthew 3:16 mblumin 3:21 mean 18:21 20:9 25:10 28:16 32:12 33:20 35:16,17 38:3 41:20 51:9 52:20 53:1,14 59:10 60:7,18 78:6 85:1 91:20 94:6 96:10 97:1 103:13 112:17 116:14 121:1,2,22	122:11 124:11 124:16 128:7 130:6,8 133:13 134:21 137:9 137:18 138:9,9 138:18 144:12 147:11 151:10 151:22 159:1 164:8,17 166:10 meaning 12:9 23:21 78:14 means 83:7 114:22 165:17 meant 115:22 138:19 148:21 149:5 mechanism 34:15 91:8 95:20 media 8:10 62:9,13 108:11 108:15 156:20 157:2 171:12 meeting 15:1,7 15:12,19 24:22 25:3 46:17 62:18 63:14,16 69:11 128:12 129:3 130:9 159:2 meetings 63:1 64:12 65:2 67:9 78:5
m			
made 21:19 38:12 64:3 72:14 73:12 81:4 92:12 98:4 99:21,21 124:22,22 129:12 176:5 make 28:1,14 33:19,21 52:20 102:19,19 103:7 134:16 138:2 144:8 145:20 146:10 148:8,17,20 149:8 150:5 151:4,18 153:4 153:8,16 155:1 159:22			

[meetings - necessarily]

Page 25

161:8,9 member 19:2 124:3 members 13:5 13:14 memo 27:4,8 27:16,22 28:13 32:6 33:10 35:5,8,21 37:11,12 38:2 38:7 40:10,13 41:12,21 42:3 42:15 44:19 45:8,9,18,22 46:16,19,21 50:20 53:20,21 54:6 55:22 56:9 57:6,18 57:21 67:7 68:7 74:12 85:2,6 92:11 92:19 97:10 144:11 148:7 148:16 memoranda 48:15,20 54:13 55:19 58:19 60:3 152:11 memorandum 6:11,16 24:3 40:6 41:3 42:21 43:10,18 43:21 44:2,14 49:3 56:17	57:3,10,11 58:3 75:15 76:6 86:10,14 143:18 144:1 145:19 memorandums 45:4 55:8 58:10 memory 75:4 memos 23:16 23:21 24:13,17 25:2,5,8,19 26:1,4,9,10,15 26:16 53:17 54:1 55:10 58:13,17 59:16 59:19 60:12,14 61:6 109:16 mention 167:9 mentioned 81:18 118:8 139:10 140:15 mentioning 30:1 met 13:4 14:14 14:17,20 15:2 15:14 132:14 155:9,13 micah 129:7 microphones 8:4 midatlantic 174:16	might've 25:6 102:10 139:2 158:19 159:2 161:15 168:4,5 miller 13:13 mind 36:20 minimum 129:10 minute 43:22 minutes 108:6 156:18 misinformed 131:11 mission 88:13 88:14 114:17 115:1,13,17 116:4 129:10 132:19 135:2 147:11,17 moment 24:21 44:13 86:1 monday 15:5 57:2 65:9,14 65:17 102:9 115:14,18 month 144:11 months 72:18 72:21 morning 106:12 motion 160:22 move 34:20 39:7 45:19 47:4,20	mspb 28:3,4 30:10 33:13 multiple 155:4 155:5 municipal 1:8 3:4,18 4:4 musk 155:9 musk's 46:9 mute 8:6 n n 3:1 4:1 5:1 6:1 8:1 name 8:20 12:21 13:1,3 14:2 57:13 66:17 named 27:1,2 126:1 names 29:2,9 33:11 35:9 37:20 42:9,11 42:13,17 142:4 142:6,14,16 164:4 narrative 34:19 narratives 37:5 national 129:2 131:6 133:16 nature 111:2 nearly 144:10 necessarily 28:4
--	--	---	---

[necessary - objection]

Page 26

necessary 49:5 123:9,16 176:6 need 14:6 59:6 112:2 needed 19:18 needs 31:2 114:14 130:20 neither 172:11 173:7 never 19:1 29:7 36:1 40:19 47:8 51:14,15 70:20 71:4,14 71:15,22 72:1 76:15 80:1 81:5,5,13 92:15 99:3 100:3 119:14 119:19,20 121:15 122:13 122:14 125:7 146:14,20,21 148:12 new 13:21 14:9 33:17 53:19 97:2 news 17:14 ngo 17:11,13 nice 126:12 night 13:19 126:3 nine 72:18 noah 2:2 7:4 8:11 10:3 38:4	69:22 171:11 174:6 175:2,24 176:2,4,12 nomination 156:9 non 34:20,21 43:13 45:16,20 54:6 60:7 norm 40:21 norman 5:21 northern 1:2 8:15 northwest 2:6 3:19 4:13 5:7 5:15 8:19 notary 172:18 176:13,19 note 8:4 40:14 41:20 42:6 45:6 55:3 143:18 174:11 noted 176:7 notes 169:11 noteworthy 115:3 notice 94:14,18 95:4,8,13 104:21 128:2 notices 102:17 103:22 123:10 123:16 127:22 noticing 9:11 notification 104:19 128:3	notified 121:8 126:3 notify 121:4 notwithstandi... 146:16 nsf 129:8 nuclear 87:15 87:16 136:6 number 8:17 40:2 48:17 50:4 129:10 162:14 171:12 numbers 145:15 numerous 60:12 154:5 o o 8:1 o'toole 104:22 106:14 oath 9:3 obey 138:15,16 object 36:6 100:9 163:10 objection 11:12 14:11 18:19 19:21,22,22 20:16,17 21:2 21:3 22:12 23:6,7 24:1 25:21 26:7,8 26:18 29:20,21 29:21 32:10,11	35:11 36:9 37:22 38:14 44:21 46:3,11 47:11,19 49:17 50:6,17,18 51:6,13,22 52:1,1,9,10,17 54:3 56:5 57:20 58:4,22 59:1,4 61:1,21 63:8 64:14 65:5,21 67:12 68:19 69:7,15 69:21 70:7,13 71:1,7,12 72:16 73:19 74:2,9 76:9,14 77:1,19 78:22 79:7,12,20 80:7,15 81:3 81:11 82:4 83:9 84:1,22 85:14 86:2,12 87:20 89:5,21 90:16 91:13 92:6,22 93:18 94:5,17,22 95:7,16 96:6 96:21 98:13 99:1,8 100:2 101:15 103:19 104:9 105:9,22 107:8,16,22 108:21 109:5
---	--	--	---

[objection - opm]

Page 27

109:13 110:21	occur 138:4	okay 9:22	once 38:16 59:3
112:10 113:8	150:12	10:10 13:21	ones 12:6 23:17
115:20 116:11	occurred	14:6,9 18:9	23:17 55:15
116:22 119:1	117:11 134:13	21:7 34:18	93:6,7 103:5
119:13 121:21	146:2	39:21 40:2	106:11 116:1,7
122:10 123:14	occurring	41:10,12 43:8	124:18 125:1
124:9 126:10	135:1	44:13 48:7,14	131:19 132:14
128:5 129:15	offer 20:21	48:20 49:13	133:12,13
129:22 131:13	21:8,19,20	50:2 53:17	137:10 169:20
133:2,10,20	22:4,19 72:14	54:12 55:12,18	open 37:2 75:2
134:3,8,20	72:17 73:12,14	57:9 58:2,9	102:15
135:13 136:13	74:22	62:7,16 66:4	opinion 119:4
136:22 137:7	office 5:13,13	70:11 75:8	opm 6:20 11:7
137:17 140:1	8:14 11:1 57:3	78:18 82:11	12:2,3,8,12
142:22 145:12	57:7 73:5,10	83:6 103:16	13:21 14:9
145:21 146:18	86:18 102:1	104:7,13,17	15:15 16:8
147:4,13	121:8 124:7	105:16 106:5	20:22 21:22
148:11,18	126:3 152:12	106:13 108:4,9	22:3,11,15,21
149:10 150:7	officer 21:22	119:21 129:7	23:5,9,11
151:7,20	55:1 129:8	135:9 142:2,13	24:14 25:1
152:15 153:19	172:1,2	143:4,16	29:3,17 36:3
154:14 155:3	officers 149:16	152:19 155:18	39:13 40:6
156:12 157:20	offices 1:12 5:2	155:21 156:6	41:3,22 42:4
159:12 160:5	56:19 57:1	156:16 158:12	42:17,21 43:10
163:21 164:6	174:5 175:1	159:22 160:11	45:8 46:10,17
164:14 165:2,7	176:1	160:16 161:14	46:22 48:15
165:11,15	official 157:17	161:17 162:6	49:3 52:13
166:5,9,18	officials 65:3	163:1,5,18	53:14,16 54:19
170:1,8	131:6	164:3 166:21	54:19 55:18
objections 9:5	oh 19:16 21:4	167:15 168:8	56:1,9,19 57:3
23:14 33:15	33:4 91:18	171:1,6	57:7,10 58:11
obviously 91:5	113:19 120:16	omb 56:1 57:3	58:20 59:13,18
94:10 138:9	138:2 142:8,9	57:7 58:17	59:21 60:3,14
158:21	150:14		60:19 61:6,11

[opm - participate]

Page 28

61:13,17,18	147:10,16	165:22	108:16 156:21
62:1,18 63:14	148:7 149:7	organizational	157:3 171:10
64:8 66:10,15	150:4,20 153:7	130:20	171:15
67:6 69:5,14	153:15 154:1,9	original 74:20	pachon 2:8
70:20 71:4	154:12,18	75:1 76:1	8:22 172:2,17
72:13 73:16,16	155:1 157:10	98:20 99:22	page 6:2,6 7:2,7
74:1,12 82:1,5	159:5,9,17	104:3 144:11	17:21 48:22,22
83:21 84:18	160:2,4 165:5	originally	49:2 55:14
85:8,21 87:18	opm's 115:4	78:20	57:9 61:6,16
89:3,4,9,16,20	131:21 136:10	outcome 9:4	66:12 75:18
90:13 91:8,11	opm.gov 5:17	172:16 173:12	114:19,20
92:3,4,8,20	opportunity	outside 139:6	115:10 143:17
93:15 94:15	84:12 97:12	154:3 160:8	175:4,7,10,13
95:5,14 96:2	112:15	overlapped	175:16,19
97:5,13 100:1	opposed 86:9	16:21	paper 6:19
100:8 103:3	opt 73:9	overrun 155:17	120:10
106:5,18	optimizing	own 10:18	papers 12:16
107:12,21	117:10	24:17 27:17	12:22
108:19 109:3,7	orally 22:2	35:8,16,17	paperwork
109:10,18	order 40:16	60:12 64:8	12:14 13:12
112:5 114:20	55:13 57:15	124:5 128:16	paragraph
115:2,11	59:5 81:5,6,14	135:5 145:20	83:14 97:8
116:18,21	104:22 105:1	159:18 160:21	157:12 168:19
117:8,22 118:4	112:8 119:18	p	part 27:7 35:21
118:4,9,20	166:2	p 3:1,1 4:1,1	50:12 51:4,10
121:9,13 122:6	ordered 82:1	5:1,1 8:1	131:8 159:3
122:21 126:4	91:11 107:21	p.m 13:11	164:22 165:5
127:17 128:3	118:21 124:4	p.m. 2:4 8:3	parte 160:22
129:9 131:12	146:9	44:8,11 48:9	participants
132:20 134:2	ordering	48:12 62:10,14	66:11,21 68:1
135:5 136:20	119:10,16	104:7 105:4,14	101:3
139:13 140:11	orders 56:10,13	106:14,18	participate
143:18 144:16	81:2,9 89:20	107:4,5 108:12	78:10 90:4,14
145:8,18	154:5,11 155:5		

[participated - peters]

Page 29

participated 66:14,18 67:9 68:11	90:1,4,8,9 96:19 99:17 101:9 102:21	70:15 75:20 114:12 121:5 121:11 123:6	176:1
participating 71:18 72:9 77:11 101:21	108:3 127:18 130:2 132:8,21 133:4,19 137:1	123:11,18,18 127:1	pertaining 19:19 27:7
particular 68:21 112:3,7 125:2,7 159:6 168:15	137:2,9,10,11 137:15 138:5 142:11 163:12 164:20	periods 6:7 25:15 27:15 30:11 31:7,8,9 31:14 32:2 35:22 40:8 41:13,18 54:9 85:8 139:1	pertains 38:22 pertinent 65:6 peters 2:2 7:4 8:11 10:3,10 10:12,13 14:6 18:2 19:5 24:6 24:14 25:3 26:4,15 27:11 33:3,6,9 34:21 35:4,19 37:5 38:4,13,21 40:4,10 42:11 42:19 43:8,18 43:20 44:2,13 45:22 47:18 48:14 51:19 52:8,16 54:17 54:20 56:4 58:3,21 60:2 60:14 62:16 66:8 70:1 74:8 76:22 78:18 79:11 82:15,22 84:16 85:10 87:5 89:16 90:12 94:4 95:13 103:16 104:17 105:19 106:13 108:18 113:19 114:3 116:21 118:18
particularly 35:21	percent 29:7 136:7	permanent 31:17	
parties 8:8 172:12,14 173:8,11	perform 166:8 performance 30:13,16 31:1 31:15 32:9 33:22 51:20,21 52:7,8,14 53:7 94:11 110:19 112:3,7,13,15 112:21 113:6 114:7,14,16 115:8 130:19 132:15 140:6 143:19 146:12 146:17,21 147:11,16 148:1 149:20	permitted 134:16 person 56:17 168:16 personal 89:18 89:22 98:3 126:4 135:6 157:16 160:9 161:19,22 personally 12:10 79:17 81:9 101:11 135:10 166:12 personnel 1:13 5:3,14 8:14 11:2 17:8 18:16 109:3 121:9 124:7 148:22 152:12 174:5 175:1	
partner 83:14 127:7			
partners 163:2 163:8			
party 9:3			
passing 67:15			
past 84:4			
pennsylvania 4:7			
people 12:20 15:11 17:19 25:4 26:2 28:2 28:6,10 29:12 30:2,21 31:4 34:10 38:4 49:6 51:15,20 52:7,14 67:3 73:4 80:10 86:18 88:10	performing 114:22 period 28:7,8 28:11 30:16,20 34:7,15 36:13 58:18 59:20		

[peters - probably]

Page 30

120:4 121:6,18 124:1,8 129:14 129:17 137:6 137:16 142:5 143:9 146:17 150:3 152:10 153:3 155:8 156:8 157:12 159:11 160:20 166:4 170:7 171:11 174:6 175:2,24 176:2 176:4,12 ph 100:17 phone 14:4 phones 8:6 phrased 89:7 115:4 116:2 pick 8:5 31:4 picking 34:10 piece 27:15 place 8:8 61:3 133:22 135:4 placing 109:11 plaintiff 8:12 plaintiffs 1:10 3:2 4:2 9:13 10:13 plan 79:17 planned 67:19 78:20 planning 99:20 100:22 101:12 103:4	plans 57:4,8 please 8:4,6 9:6 9:20 10:1 37:3 37:8 44:1 83:14 97:13 119:18 127:7 143:17 171:9 pllc 2:5 point 20:22 25:14 41:8 52:22 59:6 63:13 86:18 90:12 92:2,7 92:19 93:1,14 96:17 97:9 105:12 111:22 112:16 113:9 123:8 137:5,13 149:6 151:17 153:22 155:8 155:12 pointed 97:1 points 54:6 120:13 policies 93:13 policy 57:11,16 political 65:19 67:1 163:9 pooja 4:5,9 9:14 position 11:5 20:5 21:12 65:4	positions 12:15 57:16 123:11 123:18 possible 69:4 93:12,17 111:19 post 3:7,13 153:11,17 154:19 155:2 posted 54:19 61:6,16 74:12 power 90:3 94:11 132:13 powers 59:16 138:14 139:5 precise 152:4 preparation 10:15,19 prepare 23:4 prepared 23:15 173:3 preparing 84:3 100:14 prerequisite 113:12 present 5:20 9:8 161:4,6 president 49:7 49:15 50:3 57:15 153:14 154:1,2,11,22 155:13 president's 165:22	presidential 6:22 56:16 152:11 presumably 20:22 previously 45:3 105:1 112:3 116:9 printed 152:20 printout 6:9 54:18 61:5 106:8 prior 14:14,17 16:7 20:22 22:22 23:4 40:11 42:15 44:19 45:4 76:8 77:18 92:18 119:6,7 140:15 148:6 148:15 150:3 153:14 154:1 154:10 155:9 155:12 172:5 private 8:5 73:14 privilege 24:5 38:18,22 39:3 39:14,15 155:20 probably 21:12 53:16 59:21 66:1,1 89:6 163:12
--	--	--	---

[probational - put]

Page 31

probational 98:5	114:12 115:12 118:21 119:10	29:11 31:5,20 34:3,6,13 36:5	promoted 28:9
probationary 6:7,12 25:15 27:8,9,15 28:7 28:8,11,16,18 28:21 29:2,17 30:10,16,20 31:8 32:7 33:11 34:7 35:10,22 36:6 37:20 40:8 41:13,18 42:4 50:15,22 53:20 54:9 65:10 67:8,19 68:12 69:5,13 70:17 71:5 76:8 77:5 77:9,17 78:21 79:6,18 82:2 82:19 84:13 85:8 86:11 87:11 90:15 91:1,11 92:16 92:21 93:16 95:22 96:4,8 97:17,19 98:1 98:17 99:4 100:14 101:1 101:13 102:13 103:5,17 107:13 109:19 110:11 111:10 112:6 113:5	121:5,10,13,16 122:7,14 123:5 123:6,10,17 125:7 126:5,17 126:22 127:13 128:17 129:4 132:19 133:5 135:17 139:1 139:19 144:2 144:15 145:8 145:10,17 146:13,22 148:9 149:9,21 151:5 155:10 155:14 159:4 159:10,18 166:16 169:5 169:19 170:3 probationer's 148:1 probationers 115:1 129:10 129:11 132:14 proceed 9:21 10:7,10 proceeding 9:6 171:16 173:4 proceedings 172:3,5,6,9 173:6 process 24:5 27:21 28:4	38:18 39:14 82:7 84:11,14 88:19,19,20,21 93:5 94:1 96:13 97:14 100:18 107:19 112:22 114:8 116:8,13 117:6 122:3 127:10 130:7,17 132:18 134:6 134:22 135:12 140:4 processes 128:16 138:18 program 6:15 63:11,16,21 64:10 71:19 72:11,12,13 73:7 74:7,19 77:12 78:6,12 79:5 80:5,21 81:19,21 98:22 102:14 103:10 105:20 106:7 106:17 107:6 121:15,17 126:6,18,19 project 17:5,8 17:8,11,15 18:15,16 19:2 19:5	promptly 86:15 proper 24:7 59:3 provide 64:7 67:8 69:5 71:5 109:8 110:17 provided 17:1 34:13 53:3,5 60:3 70:21 74:14 94:15,18 95:5,9,14 108:19 109:3,7 109:10,19 110:10 111:1,6 112:12 125:20 127:11 131:21 146:20 157:17 157:18 158:3,7 158:16 159:14 providing 63:19 77:13 123:9,16 127:22 161:18 public 55:10 172:18 176:19 publicly 118:20 pull 100:20 purposes 157:19 pursuant 76:6 165:22 put 38:19 39:3 46:21,21 47:17

[put - record]

Page 32

81:1,9,13,14 117:1,2 119:18 122:12 136:11 136:21 149:17 149:18 150:17 putting 54:12	quickly 68:3 106:3 quite 12:18,18 quiz 75:4	reading 122:2 130:2 131:8 166:1 170:7 ready 10:10 64:17 120:13 realize 120:21 really 22:15,15 91:19 114:9 117:7 118:3 143:2 160:14 reason 29:15 30:5,9 31:3,6,8 32:5 34:1,5,12 51:16 60:8 61:7 67:16 73:6 94:9 112:19 144:19 145:22 152:4 174:12 175:6,9 175:12,15,18 175:21 reasons 31:10 110:18 recall 12:19 16:4 17:9 22:17 23:1 26:1 37:13,21 53:22 61:4 68:3,15,21 69:6,11 70:2 70:14 71:17 72:7 74:16,17 74:20 75:8 81:14,17 87:18	99:13 101:5 105:13 109:10 117:20 127:2 170:21 receipt 174:18 receive 84:17 received 83:4 112:2,7 129:13 136:7 recipients 142:7 recirculated 149:12,13,15 recognize 82:22 114:2 164:4,12 recollection 10:15 16:5 21:21 49:11 54:4 65:15 72:8,9 75:22 77:10 78:8,13 105:7 139:12 158:15 168:1 recommended 120:12 122:6 record 8:3,9 9:10 14:7 39:2 39:12 40:2,21 44:6,7,9,11 47:17 48:2,9 48:10,12 62:3 62:9,11,13 108:11,13,15
q	r 3:1 4:1 5:1 8:1 175:3,3		
qualifications 114:21 qualified 28:2 172:7 question 18:12 18:13 20:3 21:3 22:16 24:10 26:14 32:13,22 33:2 33:7 35:4 36:11 47:12 51:12 59:9,11 61:9 112:13 113:13 142:5 142:19 145:5 150:2 151:2 questions 7:6 18:5,7 35:3 36:22 37:4 43:16 63:19 64:7 76:20 77:9,22 78:2 103:3 120:13 128:14 138:19 141:14	radar 67:17 139:7,9 144:20 145:3 150:9,10 152:7 radically 34:6 raise 10:1 ramps 34:6 ran 170:2 ranking 124:3 rating 112:3,14 112:15 reach 136:3,20 reached 136:11 138:13 140:22 reaching 139:5 read 43:15,19 43:22 44:4 47:3 59:5 64:12,20 111:22 119:3 121:19 128:13 128:19 131:16 131:17 168:16 169:4,9,14,18 170:4,4,14,18 174:10 176:5		

[record - respect]

Page 33

156:20,22 157:2 171:10 172:9 173:5 recorded 172:6 recording 8:7 172:8 173:4 red 125:13 redacted 142:4 142:6,12,14,16 142:16 redirect 171:6 171:7 reduced 172:7 refer 13:22 130:17 131:20 163:8,11,18 166:22 167:20 reference 49:13 50:21 75:20 referenced 174:7 referred 53:16 88:20 167:6 168:19 referring 15:10 15:13 40:11 52:20,22 55:1 66:21 143:9,16 refers 130:17 163:5,12 164:1 reflect 169:21 reflected 132:4 refresh 10:14 105:7	refreshes 75:22 regarding 56:9 56:10,12,22 57:3 60:4,20 61:12 64:19 65:9 74:15,18 77:3,14 97:16 146:12 149:20 153:9,17 155:10,13 169:19 regular 12:1,3 regulations 31:12 regulatory 59:12 136:6 reign 132:8 reinstated 141:3 related 9:3 23:5 23:8,11 154:17 172:11 173:7 relating 63:10 relations 156:10 relationship 79:3 103:9 relative 172:13 173:10 relevance 46:11 52:1 56:5 57:20 59:1,3	remember 12:21 13:1,10 13:13,20 22:5 22:20 24:11 45:14 70:6,8 77:22 78:1 79:13 87:14 111:17 143:1 159:3 remotely 9:9 removed 45:11 47:2 repeat 32:22 rephrase 95:11 report 29:17 30:10 41:22 85:8 reported 2:8 reporter 8:22 9:20,22 10:7 75:19 120:1 reports 17:14 42:7 represent 54:17 104:18 110:4 152:20 representing 8:21 161:21 request 81:6 87:5,15,17,19 89:4 98:14,15 125:1 requested 172:21	requests 53:2 86:19 87:2,4,6 87:8 88:3 103:11 110:6 require 53:9 90:4 91:8 required 42:3 94:7 113:11 115:5 176:13 requirement 68:12 69:12 91:16,17 92:5 92:9,15 112:20 requiring 76:7 researchers 136:18 reserved 171:14 resign 72:15 resignation 6:11 63:11,16 64:10 71:19 72:10,12 74:7 74:19,21 75:15 77:12 78:5,12 78:19 79:5 80:5,21 102:13 103:10 121:15 121:16 126:6 126:18,19 resource 149:16 respect 38:20 41:13 53:20,21
--	--	---	--

[respect - saw]

Page 34

54:2 60:16 76:21 109:19 110:10 124:18 135:1,16 136:5 149:8 151:5 169:5 responded 77:21 responding 76:20 77:16 130:1 response 40:15 110:5 116:16 116:20 136:3 144:4,5 146:4 responsibilities 62:17 responsibility 62:20 148:22 149:20 responsive 34:20,21 45:20 restoring 57:15 restraining 40:16 105:1 retain 28:15 133:14,19 134:17 retained 86:16 115:2 171:13 retirement 73:3 return 56:15,17 57:3,7 73:5,10 174:14,17	reveal 141:5 144:6 reverse 55:13 review 10:14 10:18 31:7 84:14 97:14 112:21 114:13 132:14 172:21 174:8 reviewed 29:7 38:7 151:9 159:14 160:4 reviewing 87:14 revise 150:13 revised 40:15 143:10,12 revision 6:21 92:11,18 143:5 143:10,22 144:3 145:6 148:7,16 149:3 149:4 150:3 151:4 revisions 148:4 reward 156:14 rhetorical 59:11 126:12 rifs 56:19,22 right 10:1 11:5 11:11,21 12:21 16:9 29:4 32:9 33:14 34:17 36:8,13,14	41:14 42:14 43:2 45:5 50:5 62:19 63:2 71:11 74:1 75:10 82:15 83:8 91:12 99:18 103:18 104:17 106:15 107:6,7,15 109:4 113:7,13 115:2,19 116:10 118:22 125:10,22 134:19 136:21 143:4,20 144:3 144:9,11,16 147:3 149:3 154:17 160:7 160:16 163:17 167:22 rights 20:14 30:7,8 33:13 36:7 50:16 52:15 54:7 road 6:15 79:4 105:20 rob 45:8,18 robert 5:12 robert.bigler 5:17 robin 3:11 9:13 robust 127:9 role 17:4 22:2 22:11,14,18	23:1,5,8 24:14 28:8 rolled 72:11,13 room 13:2 40:22 167:4 rough 21:17 67:3 roughly 21:15 21:17 rtholin 3:15 rules 27:3 run 18:8 29:11 running 18:10 117:4 rushab 4:11 9:14 ryan 173:2,15 s s 3:1 4:1 5:1 6:5 7:1 8:1 175:3 safety 136:6,18 samuel 2:8 8:22 172:2,17 san 1:3 3:8,14 8:16 sanghr 4:15 sanghvi 4:11 9:14 sat 14:21 save 132:20 133:9,13 saw 76:15
--	---	--	---

[saying - separation]

Page 35

saying 16:21 79:13,19 93:21 112:20 128:3 129:13,17,17 129:20 143:15 159:16	scheduled 67:21 68:2 school 34:10 science 129:3 131:6 133:16 screaming 124:13 screen 139:7,9 144:20 145:3 150:9,10 152:7 script 64:12,17 64:21 168:16 168:22 169:4,8 169:14 170:7 170:13,17 scripts 169:18 scrutiny 36:18 second 53:5 65:17 66:12 83:14 97:8 111:22 114:19 114:20 118:1 154:4 secretariat 13:15 section 41:14 153:3 sector 73:14 see 22:5 31:15 41:14,18 42:1 42:5 43:14 44:16 48:18,21 49:7 55:15,16 55:21 56:8,11	56:15,20 57:4 57:12 66:15 75:19 82:20 83:13,17 84:17 85:13 88:18 97:7 105:3,5 106:14,19 111:19 118:16 121:2,11 153:5 153:12 156:17 157:12 163:3 seeing 120:14 120:21 seeking 50:3 seem 127:2 seen 47:8 110:1 110:9 151:22 send 38:8 41:22 42:4,17 59:16 59:17,17 61:18 85:8 86:10 97:6 102:17 sending 58:11 59:19,21 60:11 61:14 76:21 84:18,20 85:4 85:11,17,21 86:8 senior 10:22 20:21 21:9 22:2 38:16 43:13 62:17 sense 32:20	sensitive 8:4 sent 21:20,21 22:19 56:10,19 57:4 60:15,20 61:11 73:16 74:17 76:13 77:17 82:6 89:3 97:1,2 103:22 106:22 107:1,3 114:5 127:5 128:6,12 128:12 130:6 131:2,20 149:12 163:14 163:16 164:11 169:11 174:15 sentence 93:10 122:5 sentences 145:18 separate 34:3 82:8 83:15,19 84:4,8,21 85:12,22 86:9 93:7,8,15 107:13 112:19 115:12,16 122:7 125:1 127:8 separated 112:4,8 132:3 separation 93:11 111:18 123:10,17
--	---	--	--

[september - stand]

Page 36

september 16:11,13 18:1 19:11,11 sequitur 60:7 serious 30:22 31:1 served 28:8 server 61:17 62:2 service 6:19 28:12 30:12 31:10,17 33:14 36:8 43:13 73:7,13 120:9 121:4 122:9 123:4 serving 31:7 46:10 ses 45:16 54:7 session 6:18 sessions 63:10 set 13:6 17:11 61:10 67:6 99:3 123:22 setup 20:2 several 13:5 127:10 shared 100:16 100:17 128:15 sharp 173:2,15 sheet 174:12 short 32:19 54:12 65:16 108:5 156:17	shows 30:17 122:17,18 shriver 45:8,18 sic 8:3 sign 174:13 signature 161:10,11,12 171:14 172:16 173:13 signed 12:14,16 12:16 38:7 174:20 similar 45:7,9 46:20 simply 28:1,10 31:3 69:3 142:5,19 single 28:21 86:20,20 90:12 92:2,7,19 93:14 sir 119:19 size 50:4 skills 172:10 173:6 slightly 26:14 145:5 small 67:18 98:9,11 103:21 solicitor 19:10 19:13,15,17 solutions 174:22	somebody 47:8 47:11 87:9,10 101:9 102:16 122:20,20,21 soon 93:12,16 105:20 111:19 138:10 140:18 140:19 146:8 sooner 150:17 sorry 19:16 21:5,5,5 23:13 32:21 65:12 95:8 97:8 113:20 115:14 129:20 140:13 148:13 167:20 sort 31:5 40:19 51:16 53:5 87:14,15 91:16 108:2 130:4 132:9,13 138:6 sought 138:11 soul 27:17 source 123:2 southeast 4:7 space 110:17 speak 156:3 speaking 102:2 102:3 141:1 speaks 128:7 special 6:18 specific 16:5 18:5,7 22:17 23:1 40:17	50:12 58:17 59:6 92:15 93:2 104:11 128:1 132:11 143:19 146:12 specifically 31:12 61:16 163:13 170:22 speculate 159:19 speculation 86:1 spend 11:16 spoke 36:1 101:6 spoken 62:21 spontaneously 24:13 stack 162:15 staff 12:2,3,7 13:5 14:10 46:10 65:8,19 66:22 67:4 74:7 99:15 128:13 162:4,7 162:8 163:5 167:14,21 168:17 169:20 170:14 staffing 147:21 stamp 110:7 113:21 stand 171:9
--	--	--	--

[standard - take]

Page 37

standard 105:5 105:14 132:15 standing 59:5 stark 3:16 start 29:16 77:11 96:2 98:1 123:9,16 134:6 161:10 168:8 started 11:7 13:22 14:9 15:15 24:13,22 25:20 46:17 71:18 72:9 99:17,19 107:19 starting 15:6 122:7 123:11 123:18 state 1:7 3:4,17 4:4,6 9:6,9 stated 27:22 statedemocra... 4:9 statement 6:20 83:13 121:20 122:1,8,12 160:12 statements 119:3,7 130:2 131:5,16 states 1:1,12 5:2 8:14,15 11:1 41:16	104:19 174:5 175:1 176:1 static 122:18 stating 118:20 status 102:22 statute 20:10 34:14 statutes 20:15 stay 30:22 steer 84:7 124:17 stop 21:7 street 2:6 3:7 3:13,19 4:13 5:7,15 8:19 strengthening 152:13 strike 34:20 45:19 47:4,20 47:21 stringently 32:2 strong 72:9 77:10 78:12 93:20 94:3 structured 89:10 structuring 117:5 stuff 13:16 121:12 159:20 subject 39:13 82:19 83:6,7 140:14	submissions 76:6,22 77:2 106:10 submit 29:3 68:12 69:14 90:21 96:19 100:19,20 144:2 submitted 29:8 29:9 38:21 106:11,11 114:1 132:20 157:10 160:21 submitting 144:15 145:7 subscribed 176:14 substance 34:4 34:5 substantial 36:7 substantive 67:15 sued 138:7 suggesting 38:11 114:7 suggestion 38:13 suit 155:1 suitability 152:13 153:5,8 153:9,16,17 154:7 155:1	suite 2:6 3:7,13 8:19 sullivan 82:17 superpower 141:17 support 160:22 supposed 31:11 31:14 32:18 63:17 sure 33:2,19,21 83:20 115:10 138:2 143:11 159:22 suspect 39:6 swear 9:20 sworn 10:4 172:5 176:14 systems 33:22
			t
			t 6:5 7:1 175:3 175:3 tags 13:2,3 takano 124:3 take 8:8 40:1,4 48:3 61:3,3 72:18 73:7 91:6,22,22 96:15 98:16 108:4 126:19 142:2 143:19 146:11 153:9 153:17 156:17 161:2

[taken - theory]

Page 38

taken 8:11 28:19 39:4 154:18 172:3 172:12 173:9 takes 102:18 135:4 talk 25:18 46:16 47:5 75:18 141:11 talked 15:3 27:13 114:6 talking 26:5 35:14 41:13 65:14 86:17 111:13 talks 122:2 tangents 18:8 tasks 88:14 team 164:22 165:5 166:12 telephone 122:19 162:3 tell 10:5 29:1 50:9 74:6 96:3 96:8 98:11 107:1 122:20 122:20 132:2 133:4 141:11 142:18 147:2 147:10 149:7 telling 32:6 33:10 35:9 50:14 83:21 94:15 95:5,14	97:6 107:12 112:5 122:21 123:2 128:4 130:14 145:19 154:15 160:13 tells 149:7 150:4 151:4,18 temper 125:13 template 6:16 52:7,13 53:2,3 83:17 102:7 103:12 107:15 108:18 109:2 109:11,18 110:5,9,13,16 110:17 111:2 128:2 146:16 146:19,20 templates 109:7,8 temporary 6:8 25:11 40:15 43:12 44:15 45:11,22 105:1 term 30:14 terminate 29:19 40:20 50:15 67:19 82:9 91:11 92:15,21 94:16 97:19 98:5,17 100:14,22 101:12 103:4,5 103:17 108:3	112:5 118:21 121:4,9 123:4 124:19 129:9 132:22 133:4 136:10 159:6 159:10 terminated 126:7 145:11 terminating 28:5 79:18 97:16 98:1 99:17 100:17 128:16 155:10 155:14 159:18 termination 31:21 36:6 78:20 79:5,21 82:2 91:7 102:12,20 108:19 113:5 118:4 127:22 132:9 147:6 160:4 166:15 terminations 83:8 90:15 94:12 99:4 117:9,22 124:4 132:11 169:5 terms 12:9,11 25:8 30:2 31:19 144:21 testified 10:6 24:21 29:1 35:5 45:3	58:10 70:12 72:4 79:16 84:16 124:2 testifies 119:9 testify 69:18 81:8 140:9 testifying 84:19 135:5 172:5 testimony 24:15 25:2,18 26:6 35:15,19 35:20 38:15 46:15 76:2 80:13 91:4 116:9 121:19 122:8 123:12 124:7 126:8 131:10 135:9 140:16 171:11 174:10,18 176:8 thank 19:16 37:11 55:12 120:2 141:19 171:3 theme 88:8 theory 117:13 117:17,22 118:4,9 138:3 138:7 139:10 139:14,16 144:18 145:2 146:5,6 150:9 150:19 152:6
--	---	--	--

[therit - today]

Page 39

therit 124:2,6,8	109:20 111:1,6	thinking 50:9	68:7 76:4
thing 41:19	112:11 113:9	50:11,11,14	79:22 85:16
80:9	113:12,16	90:2,2 117:10	88:8 89:11
things 25:6	115:3,21,22	138:2 139:15	93:4 104:11
54:2 88:12	116:2 117:4,7	150:14 151:13	105:5,14 106:6
91:8 102:1	117:19,19	152:5	107:1 108:6,11
138:9 158:19	118:8 119:3,22	third 65:17	108:16 109:4
think 13:6,9,17	122:16,18	66:12 75:17	113:4 118:12
13:17 15:3	125:10,11,18	97:8 123:8	118:15 120:14
16:2,2,15	126:12,21	tholin 3:11	120:20 132:8
17:15,22 18:11	128:8,9 129:17	9:14 141:18	138:21 139:16
20:18 21:4	130:3,16	thought 27:16	144:10,14
22:21 23:17	131:22 132:7	27:21 32:5	145:6,10
25:6 27:5,13	133:3 136:1,1	118:11	150:19 155:8
28:20 29:6,8	136:15 139:2,8	thousands	155:12 156:20
29:10 33:16	139:10,14	145:10	157:3 167:3
34:16 36:12,13	142:10,11,15	three 65:8,15	169:19 174:19
41:19 42:12	142:16 143:13	101:9 140:3	timeframe
45:10,11,13,15	144:4 145:2	thursday 21:13	32:19 174:9
47:19 50:10,11	147:18,19,20	21:15 22:19	times 103:3
52:19,21 53:4	147:22 148:3	65:9,13,18	104:5 158:20
53:16 54:12	148:20 149:5	tie 95:20	timestamp
55:14 57:13	151:13 152:2,4	ties 114:8	107:2
61:2 64:5	154:15 155:16	time 2:4 8:6 9:6	timing 125:6
65:22 67:3	156:18 157:5	13:19 15:22	title 17:18
70:9 73:1,12	158:7,20 159:2	16:15 17:3	19:13,14 44:16
75:1 76:17	159:7,13 160:8	19:7 20:9 24:7	57:14,22
78:8 88:7 89:1	160:9 163:11	28:20 32:3	titled 44:15
89:6 90:6,6,18	164:21 166:1	36:2 37:2 39:2	57:15
92:13 93:6,19	167:17 170:2,9	43:15,19 44:4	today 10:16,20
96:10 98:14,15	170:15,15,19	44:11 48:9,12	24:15 29:1
101:5,5,16	170:20,21	58:18 59:20	45:3 155:9,12
102:6,7,10	171:1	60:13 62:9,14	169:2
108:5 109:14		63:13,15 65:3	

[today's - underway]

Page 40

today's 171:11	traffic 88:5	123:11,17	140:3 145:18
together 64:9	transaction	trick 126:13	148:3
114:16	105:4	tried 146:10	tyler 101:6,7
told 38:20	transcriber	tro 80:4,9	typewriting
52:13 71:11	173:1	81:19 104:7	172:7
79:10,17 87:2	transcript	105:8,11,12,20	typically 63:2,3
87:4,6 90:14	172:21 173:3,5	106:14 138:10	u
92:4,8,20	174:7,20 176:5	140:11,14	u.s. 5:6,13
93:15 98:7	176:8	141:4 142:20	ultimate
100:13,21	transcriptionist	144:5 146:8	148:21 149:19
101:11 103:16	172:8	true 52:16 70:5	under 18:4
114:18 115:2	transformatio...	70:9 104:6	20:15 122:5
116:19 119:9	51:10	121:20 122:1,9	underlying
122:13,14	transformative	123:13 133:1	114:2
123:3 129:8	49:6,14 50:2	156:10 172:9	underscores
132:21 133:18	51:5,11	173:5 176:8	96:12
135:14 140:5	transition 6:8	trump 49:7,15	understand
147:2	12:4 43:12	50:3	32:16 54:22
tomorrow	44:16 45:11	trump's 57:15	95:18 112:22
83:16 107:14	46:1	truth 10:5,5,6	113:3 131:11
took 48:14 64:5	transmittal	118:19 128:4	156:8 159:22
106:2 121:16	74:13 149:17	try 132:20	understanding
128:13 133:22	transmittals	138:14	86:17 93:4
top 55:7 75:8	54:19	trying 18:11	97:20 107:18
110:7 114:20	transmitted	95:20	134:22 136:14
143:17 152:2	55:4,8	ttcs 49:4,5	141:2 142:10
162:15 163:1	treasury 131:8	53:21	145:14
total 171:11	treat 47:8	turn 57:9 66:12	understood
totally 51:1	treating 30:20	twelve 141:19	18:13 98:20
touches 158:5	47:7	two 23:16,16	undertake
tracey 124:1	trial 31:9,11	24:12 25:4,10	132:13
track 141:17	34:7,15 36:13	25:22 45:4	underway
tracking 82:17	36:14 121:5,10	55:19 86:19	100:18
	121:11 123:6	101:9 114:15	

[undo - way]

Page 41

undo 36:16	96:7 103:7	video 8:7	150:19
unilaterally 127:12	128:1	videoconfere... 63:2,4 64:11	want 20:7
unit 8:10 62:9	used 30:11 87:5	65:2	33:21 40:14
62:13 108:11	96:3 171:12	videoconfere... 63:6	52:20 61:4
108:15 156:20	174:20	videographer 5:22 8:2,21	71:15 73:5,6
157:2	useful 160:10	9:19 44:7,10	91:6,9,16
united 1:1,12	using 30:15,19	48:8,11 62:4,8	102:19 104:6
5:2 8:13,15	32:8 52:7	62:12 108:10	108:6 119:17
11:1 104:19	83:16 94:12	108:14 156:19	124:18 130:22
174:4 175:1	107:14	157:1 171:9	141:5 144:6
176:1	usually 18:3	videorecorded 8:11	156:2 159:19
units 171:12	v	videotaped 2:1	159:22
unlawful 91:10	v 1:11 174:4	view 29:18	wanted 33:19
119:12,16	175:1 176:1	114:7 115:6	63:22 84:3,4
138:13	vacate 161:1	viewed 140:6	85:12,12 89:8
unlimited 49:4	vague 11:12	voluntary 73:2	90:8,9 91:15
unprofessional 124:15	14:11 19:22	73:7	91:19 111:4
unsatisfactory 110:19	20:17 22:12	vs 8:13	125:5 146:8
unusually 49:5	23:6 25:21	vulnerable 31:4	wanting 82:9
49:14 51:10	36:9 50:18	w	washington 2:7
upcoming 22:11,14 24:14	51:22 54:3	wait 13:10	3:20 4:8,14 5:8
updated 97:6	61:1	waiting 13:6,7	5:16 8:20
usda 99:16	various 142:21	waived 38:21	waste 39:2
100:6,13 126:1	verify 174:10	39:14	watch 11:10
131:6	veritext 8:21	waiver 39:19	144:21
usdoj.gov 5:9	9:1 171:13	walked 12:12	watched 11:13
5:10 174:2	174:15,22	walls 127:18	12:13,13
use 31:14 32:1	veritext.com 174:16	139:6,13	124:12
49:4,4,21	vetted 170:10		watching 11:16
52:13 53:8	170:13,17		way 15:22 19:4
	vetting 36:17		20:3 32:15
	138:19 154:7		34:16 42:14
			54:6 63:22
			64:8 70:12

[way - work]

Page 42

89:11 112:22 113:21 116:3 117:4 130:12 165:13,16 166:3 ways 61:13 we've 33:19 41:12 55:19 71:22 72:1 108:5 131:5 169:1 website 6:9 17:8,11 18:15 19:1 54:18,20 106:6,18 152:21 wednesday 2:3 week 21:13 58:9 60:4 71:20 78:9 weeks 60:17,21 61:19 84:5 127:11 140:4 144:16 145:8 went 12:12 13:2 14:21 37:15 38:2 74:8 78:6,14 78:16 118:11 132:18 140:13 142:20 wes 99:13 wha 1:12 8:17	whispering 8:5 white 152:20 wide 60:15 73:8 95:19,21 96:3,8 windup 53:11 wish 19:13 28:14,15 83:15 83:18 84:8,20 85:22,22 86:8 86:9 93:7,8 112:18 116:1,8 125:1 127:7 withdrawn 157:11 witness 9:20 10:4 11:13 14:12 18:21 20:1,18 21:4,7 22:13 23:8,15 24:4 25:22 26:9,20 29:22 32:12,16 33:16 34:22 37:9 38:2,17 39:18 45:1 46:5,12 47:6 48:6 49:19 50:8,19 51:8,14 52:3 52:11,19 54:4 56:6 57:21 58:5 59:10 61:2 62:1,5 63:9 64:15	65:6,22 67:13 68:20 69:8,16 69:22 70:8,14 71:2,8,13 72:17 73:20 74:3,10 76:10 76:15 77:2,20 79:1,8,13,21 80:8,16 81:4 81:12 82:5 83:10 84:2 85:1,15 86:3 86:13 87:21 89:6,22 90:17 91:14 92:7 93:1,19 94:6 94:18 95:1,8 95:17 96:7,22 98:14 99:2,9 100:3,10 101:16 103:20 104:10 105:10 106:1 107:9,17 108:1,8,22 109:6,14 110:22 112:11 113:9 115:21 116:12 117:1 117:16 119:2 119:14 121:22 122:11 123:15 124:10 126:11 128:6 129:16 130:1 131:14	133:3,11,21 134:9,21 135:14 136:14 137:1,8,18 140:2 143:1 145:13,22 146:19 147:5 147:14 148:12 148:19 149:11 150:8 151:8,21 152:16 153:20 154:15 155:4 155:19 156:1,6 157:21 158:6,7 159:13 163:11 163:22 164:7 164:15 165:3 165:16 166:6 166:10,19 170:2,9 171:3 172:4 174:9,11 174:13,19 wondering 164:11 wonzie 129:4,5 129:6,7 word 45:7 87:5 111:1,7 words 49:16,21 50:10 151:12 151:17 work 11:11 13:16 23:11 36:18 46:17
---	---	--	---

[work - zoom]

Page 43

56:15,17 64:3 64:5 89:15 164:19,20,21 166:8 worked 23:16 23:20 24:12 64:8 132:21 workers 33:11 144:2 145:8 workforce 57:17 152:14 working 11:7 13:19 25:1,20 165:20 works 113:1 would've 16:2 16:3 21:18,18 72:19,19,21 77:10 91:15 107:9 109:7 118:14 123:3 132:4 133:6 134:2,5,7,12 138:8,9 158:18 159:4,5,7,7 160:1,12 169:10 170:4 170:15,16,19 wow 144:22 write 32:6 49:10 56:3 83:2 writing 22:2 81:2,6,9,15	119:19 137:16 written 26:10 137:13 wrong 139:11 wrongdoing 131:1 wrote 25:22 35:5 36:4 44:19 45:4 58:2 126:2 www.opm.gov 106:6 x x 6:1,5 7:1 172:21 y yard 34:10 yeah 10:11 18:21 21:6,17 23:15 26:1 28:15 32:12 33:8 35:7 39:11 41:10,19 41:20 42:6 46:12 48:5,6 49:19 59:10 61:13 62:5,5 63:4 67:2 75:10 78:1 81:12 95:12 97:9 102:6 108:8,22 110:12 115:3	116:12 120:14 120:20 121:12 121:22 129:6 135:21 137:18 141:8 143:20 144:4,12 147:19 155:18 155:21 161:3 163:17 169:13 171:4,7 yearly 112:13 yelling 124:14 125:13 yuri 5:4 9:16 174:1 yuri.s.fuchs 5:9 174:2 z zoom 68:17 167:4
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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